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Diversity of Enforcement Titles in Cross-border Debt Collection in the EU

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1 Introduction

1.1 In general

Cyprus is an island in possession of a strategic geographical position located in the Eastern Mediterranean at the crossroads of Europe, the Middle East and Africa. While the population of the island of Cyprus is approximately 1 million, the population of The Republic of Cyprus slightly exceeds 850,000 mostly comprised of Greek Cypriots. The official languages of The Republic of Cyprus are Greek and Turkish whereas English is widely spoken and used in business and professional settings. The Republic of Cyprus joined the European Union in 2004 and is a Euro area member since 1 January 2008.

1.2 Historical background

From 1878 until 1960, the island of Cyprus was under British Rule which saw the enactment of laws and conventions for the island of Cyprus and the regulation of the island's commercial and consular relations and affairs.¹ Immediately after the outbreak of the First World War in 1914, Great Britain annexed Cyprus and the island was proclaimed a Crown Colony in early 1925.² Cyprus eventually gained its

¹ See A. Emilianides, S. Laulhe Shaelou, and A. Solomou, 2015, General Introduction.

² Ibid.

independence in 1960 becoming The Republic of Cyprus although Britain retains two sovereign bases on the island until this very day.

The 1960 Constitution of the Republic of Cyprus was drafted on the basis of the Zürich/London Agreement, which concerned efforts to constitute The Republic of Cyprus as an independent state and started with a relevant agreement in 1959 in London between Turkey, Greece and the United Kingdom and the Greek Cypriot (Archbishop Makarios III) and Turkish Cypriot community leaders of the time. A Constitution was drafted and agreed upon together with two further Treaties of Alliance and Guarantee in Zürich on 11 February 1960 providing for the independence, territorial integrity, security and constitutional structure of The Republic of Cyprus, which was accordingly proclaimed an independent state on 16 August 1960.

Until Cyprus joined the European Union in May 2004, the 1960 Constitution was considered as the supreme law of the country. After Cyprus joined the European Union, European Union Law enjoys supremacy over the Constitution. The 5th Amendment of the Constitution of Cyprus introduced Article 1A in the Constitution providing for the supremacy of EU law over the Constitution, administrative acts and national laws.

1.3 Separation of powers

The separation of powers is observed in The Republic of Cyprus. The executive power is currently exercised by the President, through a Council of Ministers appointed by him or her.³ The President has the right of final veto on decisions of the Council of Ministers and laws or decisions of the House of Representatives concerning foreign affairs, defence and security. There are also independent officers and bodies such as the Attorney-General and the Auditor-General, who head the Law Office and Audit Office of The Republic respectively. Legislative authority is exercised by a unicameral House of Representatives whose members are elected for a five-year term in a multi-party political landscape, with parties covering the whole spectrum of political ideologies arguably ensuring the functioning of a free and democratic system. The Judiciary is established as a separate power, independent from the other two branches of the state and autonomous in its sphere of

³ The Constitution of the Republic of Cyprus (as amended), Article 46.

competencies, authority and jurisdiction. First Instance Judges are appointed, transferred, promoted and are subject to the disciplinary jurisdiction of the Supreme Council of Judicature (composed of the members of the Supreme Court), whereas Supreme Court Judges are appointed by the President of the Republic. It is worth noting that the appointment and promotion of judges has recently been the subject of review with some changes already implemented towards achieving a greater degree of meritocracy and transparency.

1.4 Legal system

As a former British colony, the country's legal system is heavily based on English common law but with great influence from civil (or continental) law. As such The Republic of Cyprus⁴ has a mixed legal system comprised of both civil (or continental) law and common law elements.⁵ Specifically, in the domain of private law the English common law and equity is applied whereas in the domain of public law Administrative law is based on the Greek model which is itself largely based on the French *Droit Administratif*.⁶ The common law doctrine of binding precedent is adhered to and consequently all lower courts are bound by superior courts. Moreover, and as the current President of the Supreme Court of Cyprus explains, 'English authorities, are not binding on [Cyprus] Courts but they are of persuasive effect, especially those of the Superior Courts.'⁷ At the moment, the judicial system of the Republic of Cyprus is under review, and the whole project is supported by the Structural Reform Support Service of the European Commission.⁸

⁴ For a brief legal historical background see A. Emilianides, S. Lulhe Shaelou, and A. Solomou, 2015, p. 19-23.

⁵ N. Hatzimihail, 2013, p.38.

⁶ The Hon. Mr Justice Myron M. Nicolatos, President of the Supreme Court of Cyprus, 'The Administration of Justice in Cyprus' (Key Note Speech, Annual Dinner, University of Central Lancashire Cyprus, 20 January 2017), p. 2.

⁷ Ibid 3.

⁸ See Institute of Public Administration, *Functional Review of the Courts System of Cyprus, supported by the Structural Reform Support Service of the European Commission*. Available at:

[http://www.supremecourt.gov.cy/judicial/sc.nsf/0/15536820389ecd97c225839a00300fb5/\\$FILE/Functional%20Review%20of%20Courts%20System%20of%20Cyprus%20\(IPA%20Ireland\)%20-%20Final%20Report%20March%202018.pdf](http://www.supremecourt.gov.cy/judicial/sc.nsf/0/15536820389ecd97c225839a00300fb5/$FILE/Functional%20Review%20of%20Courts%20System%20of%20Cyprus%20(IPA%20Ireland)%20-%20Final%20Report%20March%202018.pdf) [20.6.2020].

A full review of the Civil Procedure Rules of the country was proposed by the Supreme Court in January 2017 as a distinct exercise within the wider reform project.⁹ The stakeholders consulted underlined the urgency of Civil Procedure Rules reform, on the basis that existing rules are regarded as having a detrimental impact on litigation practice and case management. They also agreed that, given the close historical legal ties, the starting point should be the existing English Civil Procedure Rules. These would be adjusted, however, to take in consideration the domestic practice, culture and customs. Following the scoping mission, terms of reference for the project were agreed in December 2017, with the formation of an Expert Group under the guidance of the (English) Rt. Hon. Lord Dyson. The Expert Group recognised targeted measures relevant to the Civil Procedure Rules that impact the operations of the courts. These include reinforcing the role of the presiding judge when conducting hearings; measures aimed at limiting the abusive use of postponements by parties; reflecting on the functioning of the system of appeals including interim appeals; and establishing fast track procedures for certain categories of cases. The overriding objective of Civil Procedure Rules reform, which is to be given statutory force, is to enable the courts to deal with cases justly and at proportionate cost. On 12 February 2020, the Opening Meeting for the Revision of the CPR was held which marked the beginning of the 7th project of civil justice reform.¹⁰ This project consists of three pillars, namely, the translation into Greek of the Civil Procedure Rules as prepared and delivered by the Expert Group under the guidance of Lord Dyson. The second pillar concerns the training of judges, lawyers, the Registrar service and staff of the Supreme Court. The third pillar includes the improvement of court practices and administrative capacity and the establishment of a monitoring system as far as the implementation of reforms is concerned.

1.5 The need for new CPR

The current CPR had been in place for more than 60 years, and were in dire need of modernisation. The EU Justice Scoreboard has repeatedly urged Cyprus to improve its performance in terms of length of court proceedings and level of backlogs in the court system, and the reform of the CPR is seen as an integral part of the major

⁹ Institute of Public Administration, *Progress Report: Review of the Rules of Civil Procedure in Cyprus*. Available at: [http://www.supremecourt.gov.cy/Judicial/SC.nsf/All/AF27E701CE40D182C22584400035C8C5/\\$file/Progress%20Report%2006.06.2018%20\(2\).pdf](http://www.supremecourt.gov.cy/Judicial/SC.nsf/All/AF27E701CE40D182C22584400035C8C5/$file/Progress%20Report%2006.06.2018%20(2).pdf) [20.6.2020].

¹⁰ Supreme Court of Cyprus, Announcement of 26 February 2020.

reform process which is currently ongoing. The European Commission has supported the Supreme Court in the modernisation of the CPR.¹¹ On the 22nd of September 2021, a weekly series of training commenced for Cypriot judges, lawyers, registrars, and court staff, that would last until December 2021. The training seeks to clarify the meaning and scope of the new Rules and shed light on the philosophy behind their drafting.¹² However, it has not yet been determined when the new Rules will come into force. Hence, the present national report was prepared on the basis of the existing CPR, as these were in force at the time the report was being drafted.

Even though there were several attempts in reforming the CPR, their shortcomings were never eliminated.¹³ For, instance, Order 30 of the Cypriot CPR encourages litigants to present and own cases in court, and encourages judges to intervene in order to draw out more evidence from the parties, similar to the way the procedure is conducted in England and Wales. However, Order 30 was reviewed and amended three times since its implementation, as its application was inconsistent on the part of lawyers and judges alike, due to the lack of precedent by the Supreme Court.¹⁴ This showcases a general problem of the current CPR, which is its dependence on precedent creation, and their characterization by a form of archaic formalism. An example is the writ system, which was abolished in the English reforms, but is still present in the CPR.¹⁵ In the meantime, delayed cases in the court system exponentially increased to the extent that it became obvious that the system was on the brink of collapse.¹⁶ The estimated time needed to resolve civil and commercial cases in Cyprus is among the longest in the EU.¹⁷ The chronic excessive delays

¹¹ “Modernising the Civil Procedure Rules in Cyprus”, European Commission. Available at: https://ec.europa.eu/reform-support/modernising-civil-procedure-rules-cyprus_en [15.11.2021].

¹² “Training for lawyers on the new Civil Procedure Rules launched in Cyprus”, Council of Europe. Available at: <https://www.coe.int/en/web/national-implementation/-/training-for-lawyers-on-the-new-civil-procedure-rules-launched-in-cyprus> [15.11.2021].

¹³ Judicial Service, *Civil Procedure Rules (Proposed) supported by the Directorate General for Structural Reform Support (DG REFORM) of the European Commission*, p. 10. Available at:

[http://www.supremecourt.gov.cy/judicial/sc.nsf/All/3C14E6251DEC1DEF22586F80027A8AA/\\$file/FULL%20VERSION%20CPR.pdf](http://www.supremecourt.gov.cy/judicial/sc.nsf/All/3C14E6251DEC1DEF22586F80027A8AA/$file/FULL%20VERSION%20CPR.pdf) [15.11.2021].

¹⁴ N. Mouttos, 2020, p. 119

¹⁵ *Ibid*, 2020, p. 109

¹⁶ Judicial Service, *Civil Procedure Rules (Proposed) supported by the Directorate General for Structural Reform Support (DG REFORM) of the European Commission*, p. 10. Available at:

[http://www.supremecourt.gov.cy/judicial/sc.nsf/All/3C14E6251DEC1DEF22586F80027A8AA/\\$file/FULL%20VERSION%20CPR.pdf](http://www.supremecourt.gov.cy/judicial/sc.nsf/All/3C14E6251DEC1DEF22586F80027A8AA/$file/FULL%20VERSION%20CPR.pdf) [15.11.2021].

¹⁷ European Commission, *The 2021 EU Justice Scoreboard*, p.9. Available at:

https://ec.europa.eu/info/sites/default/files/eu_justice_scoreboard_2021.pdf [15.11.2021].

characterising civil justice in Cyprus vividly illustrate that reforming the CPR, as part of a wider reform of the Cyprus legal system, was long overdue and urgently needed.

2 General inquiries regarding enforcement titles

According to Cyprus law, a court judgment or order constitutes an enforcement title *per se*, thus it is enforceable upon its delivery. The deadline for submitting an appeal does not by itself suspend the enforcement of the judgment, unless the appellant lodges a reasoned request for this purpose.¹⁸ In other words, any party who has obtained a court judgment or order can request the competent authorities to take enforcement measures, with the competent authorities being the Court Service (bailiffs) and the Land Registry, in case the judgment produces *in rem* effects. Acts that are not issued by a court, such as arbitral awards, do not constitute enforcement titles. In order to be declared so, the court that has jurisdiction should issue an order for the enforcement of the act. This order will be the enforcement title.¹⁹

The Civil Procedure Law, Cap 6, explicitly provides that every court's judgment ordering the payment of money is an enforceable title, and can be enforced through all or any of the prescribed methods of execution and enforcement directed against the judgment debtor.²⁰ In brief, the prescribed methods include, *inter alia*, the writ of execution for sale of movables or immovable property, the writ of sequestration of immovable property, a garnishee order, which affects a third party that owes a

¹⁸ Civil Procedure Rules, Order 35, Rule 18

¹⁹ Arbitration Law, Cap 4, Article 21

²⁰ See also Civil Procedure Rules, Order 40, Rule 1

debt to the judgment debtor, payment of compensation through monthly instalments, and injunctions.

The most recent and specific definition of ‘civil and commercial’ matters in the Cyprus legal order can be found in the Law 159(I)/2012, ‘Law which provides for certain aspects of mediation in civil matters’. According to this, ‘civil dispute’ means any dispute which may be an object of civil proceedings by the meaning assigned to this term by virtue of the Courts Law of 1960, and includes labour disputes but does not include family disputes. To this extent, the Courts Law describes civil proceedings as any court proceedings other than criminal proceedings. Moreover, ‘commercial dispute’ means dispute arising from a commercial transaction between undertakings or between undertakings and public authorities, as this term is interpreted by the Combating Late Payment in Commercial Transactions Law. Commercial transactions cover any transactions that is made between businesses or between business and public authorities, which provides for the delivery of goods or the provision of services for a fee.

A creditor seeking execution of a judgment against a debtor must firstly prove that the judgment was given in a ‘civil or commercial matter.’ Generally, the recognising court is entitled to decide whether the judgment falls under the ‘civil and commercial’ matters, based on the law of Cyprus.

According to Article 2 of the Courts Law of 1960, ‘court’ means the Supreme Court or any other court under the Supreme Court, established under this Law or established under any other Law that has jurisdiction.²¹ The Supreme Court has unlimited jurisdiction and it acts as an appellate court, admiralty court and electoral court. When it renders judgments as an appellate court, these decisions are final, unless overturned by the CJEU. Furthermore, the Supreme Court has exclusive jurisdiction to issue prerogative orders (habeas corpus, mandamus, certiorari, quo warranto and prohibition). Appeals are usually heard by a panel of three judges except in cases where the hearing can take place before an enlarged panel, depending on the importance of the case. When the Supreme Court exercises its first instance

²¹ See Ch. Clerides, “The Cyprus Court structure”, *Clerides Legal*, October 06,1992.Available at : <https://clerideslegal.com/article/the-cyprus-court-structure> [15.11.2021].

jurisdiction (in all cases except when it acts as an appellate court), the case is heard by one judge.²²

In addition to the Supreme Court, Cyprus has five District Courts, one for each district of Cyprus: Nicosia, Limassol, Larnaca, Paphos, and Famagusta. District courts consist of president judges with jurisdiction to litigate claims in excess of 500.000 EUR, senior district judges with jurisdiction to litigate claims between 100.000 EUR and 500.000 EUR, and district judges with jurisdiction to try claims below 100.000 EUR.²³

In addition to the Supreme Court and the District Courts that have jurisdiction over civil and commercial matters, there are two more specialised courts that fall under the definition of ‘Courts and Tribunals’ as provided for by the B IA. These are the Industrial Dispute Tribunal and the Rent Control Tribunal. The former has exclusive jurisdiction to hear all industrial disputes arising from the termination of employment, such as payment of compensation for unfair dismissal, payment in lieu of notice, redundancy payments and claims arising out of the contract of employment, such as accrued wages, annual holiday, 13th month pay or bonuses. It also has jurisdiction to hear any civil claim based on the Motherhood Protection Act, cases of unequal treatment and sexual harassment in the workplace and disputes between Provident Funds and their members. The latter has jurisdiction to hear matters regarding recovery of possession of rented property, the setting of fair rents and any other incidental or additional matters. Other lower courts of special jurisdiction are the Administrative Court, which has exclusive jurisdiction to hear at first instance appeals under Article 146 of the Constitution regarding any decision, act or omission of persons or bodies exercising administrative authority, the International Protection Administrative Court, which has exclusive jurisdiction to adjudicate on first instance recourses by asylum seekers under Article 146 of the Constitution regarding any decision, act or omission to the provisions of the Refugee Law, the Family Courts, which litigate petitions for divorce, custody of children, maintenance and property disputes between spouses who are members of the Greek

²² The Constitution of the Republic of Cyprus (as amended), Articles 152-157

²³ Courts of Justice Law, 14/1960, Part 3

Orthodox Church, and the Military Court, responsible for offences committed by military personnel.²⁴

2.1 Types of judgements

The most common typology of decisions concerns whether the judgment is ordering a party to do or refrain from doing something (condemnatory), or whether it confirms or refuses a legal right, obligation or status (declaratory), or it establishes, alters or ends a legal right, obligation or status (constitutive). According to Article 31 of the Courts Law of 1960, a judgment should resolve the issues in dispute fully and finally, while Article 32 provides for injunctions. Also, Article 41 of the same Law provides for the courts' authority to issue declaratory judgments.

Cyprus civil procedure rules provide for judgments in default of appearance or defence.²⁵ Generally, court proceedings in a district court in Cyprus are initiated when a writ of summons is filed and sealed at court.²⁶ Following service of the proceedings, the defendant has ten days to file an appearance and then a defence must be filed within 14 days. In case the defendant fails to file an appearance within the prescribed period, the claimant can apply to the court and obtain a default judgment. However, a defendant can file an appearance outside the prescribed time limit to stop the issuing of a judgment in default. If the defendant files an appearance but not a defence, the claimant can file an application for issuance of judgment without a full hearing being conducted. Moreover, where the defendant files an appearance or a defence to a specially endorsed writ of summons, the claimant can, where appropriate, apply for a summary judgment on the grounds that there is no defence to the action. Summary judgment proceedings are governed by Order 18 of the Civil Procedure Rules. Summary judgments offers a fast-track adjudication of a claim, when the claimant has good and valid reasons to believe that the defendant has no defence.

²⁴ For a diagram on the Court structure in Cyprus see: "Diagram", Supreme Court of Cyprus. Available at: http://www.supremecourt.gov.cy/judicial/sc.nsf/DMLchart_gr/DMLchart_gr?opendocument [18.6.2020].

²⁵ Civil Procedure Rules, Order 17

²⁶ *Ibid*, Order 2

Another type of decision is the ‘judgment to set aside’, which is sought by the defendant in order to have the claim dismissed or to have part or full action eliminated on grounds such as lack of jurisdiction of Cypriot courts or *res judicata*.²⁷

Cypriot courts can also issue interim judgments/orders, such as a judgment for the claimant to provide security for costs, judgment for amending pleadings and judgment for provision of further and better particulars on a filed pleading. Furthermore, the Cypriot courts may issue interim prohibitive, mandatory, disclosure or preservation orders within the framework of pending proceedings. Additionally, Cypriot courts have jurisdiction to issue Anton Piller orders,²⁸ which are search orders that allow the claimant to enter premises and obtain information which is likely to be destroyed, Norwich Pharmacal orders,²⁹ which require disclosure of information against a wrongdoer by a third party, and gagging orders, which prevent the defendant from disclosing the filing of the proceedings and/or the application to the public in general, any potential defendants and/or any other unauthorised third party. Other orders that can be issued are orders in support of arbitration or foreign proceedings, or orders facilitating an arbitration proceeding.

All of the above-described domestic decisions conform to the definitions of ‘judgments’ and ‘authentic instruments’ in the context of B IA.

The understanding of the notion of ‘judgment’ is only based on Cyprus law, since the national courts have never addressed any question to the CJEU on this matter, when exercising their preliminary references right under Article 267 TFEU.

Judgments in default of appearance or defence are governed by Order 17 of the Civil Procedure Rules. Where the defendant fails to file an appearance within ten days from the day the writ of summons was served, the claimant can apply to the court and obtain a default judgment. In particular, where the writ of summons is for a

²⁷ S. Pavlou, Ch. Nicolaou and others, “Litigation and enforcement in Cyprus: Overview”, *Practical Law*, April 1, 2021. Available at: [https://uk.practicallaw.thomsonreuters.com/7-502-0202?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1#co_anchor_a334258](https://uk.practicallaw.thomsonreuters.com/7-502-0202?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1#co_anchor_a334258) [5.4.2021].

²⁸ *Anton Piller KG v Manufacturing Processes Ltd & Ors* [1976] 1 All ER 779.

²⁹ *Norwich Pharmacal Co. & Others v Customs and Excise Commissioners* [1974] AC 133 and *Mitsui & Co Ltd v Nexen Petroleum UK Ltd* [2005] EWHC 625.

liquidated demand, whether specially endorsed or otherwise, and the defendant fails to appear thereto, the claimant may apply for judgment for any sum not exceeding the sum claimed by the writ, together with interest at the rate specified in the claim (if any) and costs. Where the writ is for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages, and the defendant fails to appear, the claimant may apply *ex parte* to the Court or a Judge for judgment, and the Court or Judge may ascertain the value of the goods or the amount of the damages in any way in which the Court or Judge may think fit and give judgment accordingly. The same applies when there is a claim for arrears for rent, or damages for breach of contract or wrong or injury to the property claim. Where the writ is for the recovery of immovable property and the defendant fails to appear to the writ within the time limited for appearance, or if an appearance is entered but the defence is limited to part only, the claimant may apply for judgment for recovery of the property or of the part thereof to which the defence does not apply.

If the defendant does not participate, or withdraws, the court cannot automatically give a decision in favor of the claimant. Rather, it must still review the evidence and make a decision on the merits. This is explicitly provided in Order 17 Civil Procedure Rules. Thus, in all cases in which it is sought to obtain judgment by default, the Court or Judge may, where it seems necessary or desirable, call upon the claimant to prove his claim, and whether the claimant is so called upon or not, the Court or Judge may only give judgment to the extent to which the claimant is in law entitled.

3 General aspects regarding the structure of judgements

While the precise structure of the judgment may vary depending on the circumstances of the case and the legal issues arising therein, a civil court judgment is comprised of the following elements:

- Title: the title includes the case number, specific court hearing the case, the name of the judge, the names of the parties and the lawyers of the parties. Any amendments to the parties and the party names will be indicated in the title. Also, when the defendant(s) files a counterclaim, the party names will appear for a second time in reverse, to indicate that the defendant is a claimant on the basis of a counterclaim (and that the claimant is a defendant in this respect).³⁰
- Introduction/History of the case – on occasions the court will provide a brief introduction to the case.
- Claims of both sides: the court will refer to the claims of the parties at the beginning of the judgment (frequently this forms part of the introductory part of the judgment). Reference to the claims of the party

³⁰ *Alpha Bank Cyprus Ltd v. Prestos Confectionery Ltd and others*, Case No. 330/06, 30/1/2015, ECLI:CY:EDPAF:2015:A17.

will also be made throughout the judgment to the extent that these are relevant and necessary. As a matter of practice, the court will first set out the claimant's side as provided foremostly in the claim. Subsequently, the court will discuss the defence put forward by the defendant (and any counterclaims, if relevant). In this respect, the court may refer to specific extracts from the claim and the defence (and counterclaim if relevant), the closing speeches of the lawyers etc.³¹

- Testimony: the court will present, to the extent necessary, the testimony brought forward by each side.
- Assessment of testimony: the court will assess the admissibility and probative value of testimony. If specific issues arise from the testimony, the court may choose to discuss them separately.³²
- Legal aspect: at a later part of the judgment, the court will elaborate on the legal issues arising in the case at hand. Firstly, the court will set out the relevant law(s), and case-law. Subsequently, in the same section, or different section(s) (depending on the number of legal issues which need determination), the court will reach its final conclusions of the issues at hand, by reference to the law and evidence.³³
- Interest: where relevant, the court will discuss the issue of interest.
- Conclusion/outcome: this last section in the judgment encapsulates the findings of the court with respect to the liability of the parties and the operative part of the judgment (including legal costs).

The structure of a judgment is prescribed by court practice. As elaborated above, a civil court judgment will contain almost invariably certain elements (title, claims of the parties, assessment of evidence, legal assessment, and outcome). At the same time, the template of the judgment may vary depending on the formatting tools and personal writing style of the individual judge. Several judgments incorporate headings while others include none.³⁴ On rare occasions, the judgment will also include a table of contents.³⁵ Some judgments contain numbered paragraphs and/or

³¹ *Ibid.*

³² *Constantinidi and another v Mindoras Estates Ltd*, Case No. 1791/2005, 7/6/2013, ECLI:CY:EDPAF:2013:A154.

³³ *PNO Shipmanagement Ltd v. Bank; of Cyprus Public Company Ltd*, Case No. 1958/12, 29/01/2016.

³⁴ For comparison see: *PNO Shipmanagement Ltd v. Bank; of Cyprus Public Company Ltd*, Case No. 1958/12; *Alexis Tsiakkas & Company Limited v Scowmountain Enterprise Ltd and others*, Case No. 1718/19, 28/1/2019, ECLI:CY:EDLEM:2019:A46.

³⁵ *Constantinidi and another v Mindoras Estates Ltd*, Case No. 1791/2005, 7/6/2013, ECLI:CY:EDPAF:2013:A154.

footnotes.³⁶ Also, the text of the judgments does not follow a consistent font style and size.³⁷

The structure of civil law judgments is not regulated by law and does not follow a formal structure. However, as a matter of practice, it is adequately standardised. As discussed above, a judgment will always encompass certain elements. The length and detail provided by the judgment with respect to each element will vary depending on the circumstances and the legal issues arising. Where numerous complex legal and factual issues arise, the structure and content of the judgment will be more developed and sophisticated when compared to a straightforward case.³⁸

Significant variations to the structure of the judgment do not constitute ‘exceptions’. Rather, they pertain to specific procedural and substantive issues which require the attention of the court. For example, a party may raise an objection as to the jurisdiction of the court to hear the case. In such an instance, the court will first determine the question of jurisdiction before proceeding to discuss the remaining disputed claims between the parties, which encompass the elements discussed above). If the court determines that there is lack of jurisdiction, it may dismiss the case altogether, or refer it to the appropriate court. Hence, the structure of the judgment will reflect this outcome.³⁹ Similarly, a plea of *res judicata* will need to be entertained by the court in the judgment, before deciding on the legal issues at hand.⁴⁰

As discussed above, the way the different elements of the judgment are presented and separated from one another largely depends on the personal writing style of the individual judge and the formatting tools she/he may employ in drafting the judgment.

³⁶ For comparison see: *Constantinidi and another v Mindoras Estates Ltd*, Case No. 1791/2005, 7/6/2013, ECLI:CY:EDPAF:2013:A154; *PNO Shipmanagement Ltd v. Bank; of Cyprus Public Company Ltd*, Case No. Αρ. Αγωγής: 1958/12, 29/01/2016; *Acuac, Inc v. Frederickou Schools Co. Limited and others*, Joined Cases 8809/03 and 4036/08, 31/3/2014, ECLI:CY:EDLEF:2014:A133; *Cyprus Electricity Authority v Larnaca Municipality and others*, Case No. 2586/2011, 12/4/2017, ECLI:CY:EDLAR:2017:A59.

³⁷ For comparison see: *Constantinidi and another v Mindoras Estates Ltd*, Case No. 1791/2005, 7/6/2013, ECLI:CY:EDPAF:2013:A154; *Acuac, Inc v. Frederickou Schools Co. Limited and others*, Joined Cases 8809/03 and 4036/08, 31/3/2014, ECLI:CY:EDLEF:2014:A133.

³⁸ *Alexis Tsiakkas & Company Limited v Scomountain Enterprise Ltd and others*, Case No. 1718/19, 28/1/2019, ECLI:CY:EDLEM:2019:A46; *Acuac, Inc v. Frederickou Schools Co. Limited and others*, Joined Cases 8809/03 and 4036/08, 31/3/2014, ECLI:CY:EDLEF:2014:A133.

³⁹ *Ioannon v Nicolaou*, Case No. 1987/05, 22/1/2015, ECLI:CY:EDLEF:2015:A17.

⁴⁰ *Acuac, Inc v. Frederickou Schools Co. Limited and others*, Joined Cases 8809/03 and 4036/08, 31/3/2014, ECLI:CY:EDLEF:2014:A133.

3.1 Structure of judgments at first instance and on appeal

The Court System of the Republic of Cyprus is based on a two-tier structure: the Supreme Court and the lower first instance courts.⁴¹ Subject to the appellate jurisdiction of the Supreme Court are: all final judgments or orders of first instance courts exercising civil jurisdiction (District courts and other courts of specialised jurisdiction), all prohibitory or mandatory injunctions, and interim judgments which are absolutely decisive as to their effect on the rights of the parties.⁴²

The structure of appeal judgments is premised on the appeal grounds of the appellant(s) and the cross-appeal grounds of the respondent(s) (if relevant).⁴³ The Supreme Court will refer to the claims of the parties in the first instance case and the outcome of the proceedings. Significantly, the Supreme Court will set out the appeal grounds in a clear and succinct manner at an early part of the judgment. Subsequently, the appellate court will examine each appeal ground individually and where relevant provide extracts from the first instance judgment and the court records. It may also deal with more than one appeal ground at the same time if this is relevant and appropriate.

In terms of drafting the operative part, the Supreme Court will accept or reject the appeal (wholly or partially) and decide on the legal costs. In the event of a (partially) successful appeal, the Supreme Court will reverse (partially) the first instance judgment. For example, the Supreme Court may increase the amount of compensation given by the first instance court.⁴⁴ The appellate court may also award compensation originally denied by the first instance court.⁴⁵ Alternatively, the Supreme Court may set aside the first instance judgment and order a retrial by the first instance court before a different judge. For example, the Supreme Court may

⁴¹ Court Chart (*Supreme Court, Republic of Cyprus*). Available at: www.supremecourt.gov.cy/judicial/sc.nsf/DMLchart_en/DMLchart_en?opendocument [26.6.2020].

⁴² Courts of Justice Law of 1960 (14/1960), section 25.

⁴³ *Magistrato Gardens Ltd v Attorney General of the Republic by Law Representative of the Republic of Cyprus of the Ministry of Agriculture, Natural Resources and Environment and/ or the Limassol District Development Department* (2012) 1 CLR 220. See also: Civil Procedure Rules, Order 35 Rules 4 and 10.

⁴⁴ *Magistrato Gardens Ltd v Attorney General of the Republic by Law Representative of the Republic of Cyprus of the Ministry of Agriculture, Natural Resources and Environment and/ or the Limassol District Development Department* (2012) 1 CLR 220.

⁴⁵ *Fisenzjidi v Ke&C Snooker & Pool Entertainment*, Civil Appeal No. 30/2019, 1/6/2020, ECLI:CY:AD:2020:A171.

order a retrial when the first instance court fails to address real and material issues which arise from the pleadings and the testimony.⁴⁶

When the claimant files a Claim, the defendant is entitled to submit a Counterclaim together with his/her Defence. According to the Civil Procedure Rules, ‘such counter-claim shall have the same effect as a cross-action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and on the cross-claim.’⁴⁷ Alternatively, the Civil Procedure Rules provide for the possibility of the court hearing the counterclaim in separate proceedings: ‘if the plaintiff, or any other person made a party to it, contends that the claim thereby raised ought not to be disposed of by way of counter-claim, but in an independent action, the Court or a Judge may at any time order that such counter-claim be excluded.’⁴⁸

In terms of structuring the judgment, the court will refer to the claim and counterclaim of the claimant and the defendant respectively at the beginning of the judgment (frequently this will form part of the introductory part of the judgment). Reference to the claim and counterclaim will also be made throughout the judgment to the extent that this is relevant and necessary. As a matter of practice, the court will first set out the claimant’s side as provided foremostly in the claim. Subsequently, the court will discuss the defence and counterclaim put forward by the defendant. In this respect, the court may refer to specific extracts from the claim and the defence and counterclaim, the closing speeches of the lawyers etc.⁴⁹ In its assessment of the evidence, the court will also refer to testimony pertaining to the counterclaim, before proceeding to discuss the legal issues arising in the case at hand on the basis both of the claim and counterclaim.⁵⁰ The last part of the judgment encapsulates the findings of the court with respect to the liability of the parties and the operative part (including legal costs). Where there is an assertion of a counterclaim, the operative part may specify the liability of the defendant pursuant to the successful (wholly or partially) claim of the claimant. At the same time, if applicable, the operative part will also specify the liability of the claimant based on a

⁴⁶ *Amvrosios Kyprianou v Evridiki Vasileiou* (2004) 1 CLR 1320; *Papadopoulos and another v Livera* (1992) 1 CLR 606, 610.

⁴⁷ Civil Procedure Rules, Order 19 Rule 3.

⁴⁸ *Ibid*, Order 21 Rule 10.

⁴⁹ *Alpha Bank Cyprus Ltd v. Prestos Confectionery Ltd and others*, Case No. 330/06, 30/1/2015, ECLI:CY:EDPAF:2015:A17.

⁵⁰ *PNO Shipmanagement Ltd v. Bank of Cyprus Public Company Ltd*, Case No. 1958/12, 29/01/2016.

successful (wholly or partially) counterclaim raised by the defendant.⁵¹ In instances, the court may reject completely both the claim and the counterclaim.⁵² Alternatively, the court may reject the claim in its entirety and accept the counterclaim.⁵³

3.2 Obligation to fulfil the operative part

As a matter of practice, it is clearly understood that the obligation in the operative part is to be fulfilled by the defendant immediately, unless the operative part specifies otherwise. This practice is also supported by Order 40 Rule 7 of the Civil Procedure Rules which provide as follows:

‘Every person to whom any sum or money or any costs shall be payable under a judgment or order shall, *so soon as the money or costs shall be payable, be entitled to apply for the issue of writs to enforce payment thereof* (emphasis added).⁵⁴

This provision is subject to two exceptions. Firstly, if the judgment or order specify a period within which payment is to be made, no writ can be issued by the court until the period expires.⁵⁵ Secondly, the court or judge may stay execution, at the time of giving judgment or at a later stage, ‘until such time as they or he shall think fit.’⁵⁶ For example, the operative part may stipulate that the defendant has a limited period within which to perform or that payments will be made at regular intervals (e.g. monthly or annually) or that the defendant would start fulfilling his/her obligations from a specified date onwards etc.. In *Stelios Panayiotou and Sons Limited v Nicolaou*, the defendants were ordered to hand over within 30 days the property in the possession of the claimants.⁵⁷ On the other hand, in *Bank of Cyprus Public Company Limited v Perikenti and others*, one of the defendants was ordered to repay the debt on an annual basis (plus interest).⁵⁸ The wording of the court specified the amount to be paid each year and the interest rate. Furthermore, the judgment stipulated the date on which repayment of the debt would start, this being six months after the

⁵¹ *J. Sardalos and Sons Ltd v. C. Sardalon*, Case N. 58/07, 13/1/2015, ECLI:CY:EDAMM:2015:A2.

⁵² *Antoniou v Vasileiou*, Case No. 1726/07, 15/12/2009, ECLI:CY:EDLAR:2009:A126.

⁵³ *SKS Development Sons Limited v La Lenia Jewellery Ltd and others*, Case No: 165/06, 13/05/2011.

⁵⁴ Civil Procedure Rules, Order 40 Rule 7.

⁵⁵ *Ibid*, Order 40 Rule 7(a).

⁵⁶ *Ibid*, Order 40 Rule 7(b).

⁵⁷ *Stelios Panayiotou and Sons Limited v Nicolaou*, Case No. 4845/12, 30/11/2018, ECLI:CY:EDLEM:2018:A500.

⁵⁸ *Bank of Cyprus Public Company Limited v Perikenti and others*, Case No: 917/2016, 21/3/2018, ECLI:CY:EDPAF:2018:A94.

issuance of the judgment. Failure on the part of the debtor to perform the obligations in the operative part may render a judgment immediately enforceable. For example, in *Tsiamezi v Construction Company CHPH Alexandrou Ltd*, the court issued an eviction order against the defendants which was suspended for a limited period of time. As specified in the operative part, failure on the part of the defendants to make the monthly interim payments, would result 'in the automatic termination of suspended enforcement, and as a consequence, the eviction order would become immediately enforceable.'⁵⁹

The time-period during which a judgment remains enforceable is regulated by the Civil Procedure Rules.⁶⁰ Hence, the judgment itself does not specify a time-period. On 24 March 2020, the enforcement period of judgments was extended from ten to twelve years.⁶¹ If no enforcement takes place within this period, the party alleging to be entitled to enforcement, must request the leave of the court. The process is stipulated by Rule 40 Order 8 of the Civil Procedure Rules as follows:

'Where twelve years have elapsed since the judgment or date of the order, or where any change has taken place by death or otherwise in the parties entitled or liable to execution, the party alleging himself to be entitled to execution may apply to the Court or a Judge for leave to issue execution accordingly. And such Court or Judge may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties shall be tried in any of the ways in which any question in an action may be tried. And in either case the Court or Judge may impose such terms as to costs or otherwise as shall be just.'

3.3 Actions before the district courts

Unless other provision is made, all actions before a District Court begin with a writ of summons (Forms 1 and 2).⁶² When the writ of summons is presented in court for sealing it must contain the following personal information of the Parties:

⁵⁹ *Tsiamezi v Construction Company CHPH Alexandrou Ltd*, App. No. E131/07, 19/2/2014, ECLI:CY:DEELEF:2014:3.

⁶⁰ Civil Procedure Rules, Order 40 Rule 8.

⁶¹ Civil Procedure (Amendment) (No. 1) Procedural Regulation of 2020, 24/3/2020.

⁶² Civil Procedure Rules, Order 2 Rule 1 (Forms 1 and 2).

'the name in full of the plaintiff and the defendant, the address in full and occupation of the plaintiff and, so far as they can be ascertained, of the defendant, and the plaintiff's address for service within the municipal limits of the town or village in which is situated the registry in which the writ is being filed.'⁶³

The title of the action consists of the name of the court in which the writ is filed, the names of the parties, the number of the action and the year in which the action is instituted.⁶⁴ The title of the action may be amended when necessary. For example, parties may be added or struck out.⁶⁵ Also, party names may be amended to correct a mistake or error.⁶⁶ For the purposes of identifying the parties in a judgment, every judgment 'shall be entitled with the full title and amended title (if any) of the action in which it is given.'⁶⁷ Furthermore, the judgment will indicate which parties were presented or represented during the proceedings.⁶⁸

The courts indicate the amount in dispute with reference to the claim. If there is an assertion of a counterclaim on the part of the defendant, the court judgment will also indicate the counterclaimed amount as specified in the counterclaim.⁶⁹ Any amendments to the pleadings (including the amount in dispute) are regulated by Order 25 of the Civil Procedure Rules. Depending on the circumstances, leave of the court may be required by means of an application under Order 48 of the Civil Procedure Rules. The outcome of such an application will be determined in an interim judgment.⁷⁰ The final judgment will refer to any changes made to the amount in dispute.

As indicated in section 3 above, a court judgment provides a legal assessment of the dispute following an elaboration of the claims/counterclaims of the parties, the evidence referred to and a discussion on the legal aspects of the case. Ultimately, the court's legal assessment of the dispute will also determine the content of the operative part and the court's decision on the relief sought. This is the structure

⁶³ *Ibid*, Order 2 Rule 3.

⁶⁴ *Ibid*, Order 63 Rule 1.

⁶⁵ *Ibid*, Order 63 Rule 2.

⁶⁶ *CY Painters Limited v D & K Anosis Paper Ltd*, Case No. 3118/2011, 5/5/2014, ECLI:CY:EDLEF:2014:A193. See also: Civil Procedure Rules, Order 25 Rule 5.

⁶⁷ Civil Procedure Rules, Order 34 Rule 3.

⁶⁸ *Ibid*, Order 34 Rule 3.

⁶⁹ *J. Sardalos and Sons Ltd v. C. Sardalou*, Case N. 58/07, 13/1/2015, ECLI:CY:EDAMM:2015:A2.

⁷⁰ *Antonis H Office Paper Distributors Ltd v Marktel Supplies Limited*, Case No. 395/11, 11/5/2018, ECLI:CY:EDLEM:2018:A194.

followed by civil law judgments irrespective of whether the judgment and/or orders included therein may be subject to further enforcement proceedings. As a matter of law and practice, it is clearly understood that the obligation in the operative part is to be fulfilled by the defendant immediately, unless the operative part specifies otherwise.⁷¹ Enforcement proceedings may be pursued against any party who fails to abide by the judgment and the order(s) issued against them.⁷²

Section 41 of the Courts of Justice Law of 1960 provides that the courts have the discretionary power to issue binding declarations of rights, irrespective of whether any relief is claimed or could be claimed, or not.⁷³ Hence, the courts may issue a declaratory relief in the absence of a consequential relief. On most occasions, a claim for a declaratory relief will be accompanied by a claim for a consequential relief. Consequently, the operative part of the judgment will refer to the outcome of a claim for declaratory relief to the extent that this is sought by the parties, together with any other claims, including payment of a judgment debt.⁷⁴

The power of the court to issue declaratory relief does not extend to interim proceedings. In rejecting such an application, the district court referred to *Commercial Litigation Pre-Emptive Remedies* by Iain Goldrein and others:

“The Court has long had power to make final binding declarations of right as between the parties to litigation. However, that power did not carry with it a power to make a declaration on an interim basis in civil proceedings.”⁷⁵

In a judgment, the court will decide solely on the merits of the case based on the claims of the parties (and counterclaims where relevant). On rare occasions, the court will also consider procedural issues in a final judgment (e.g., jurisdiction, standing etc) not previously addressed as preliminary issues of law at an interim stage of the proceedings. The court’s elaboration of such issues will form part of the reasoning; the court will not issue a separate “decree” in this respect. The same is

⁷¹ Civil Procedure Rules, Order 40 Rule 7.

⁷² Courts of Justice Law of 1960 (14/1960), section 25; Civil Procedure Law (CAP 6), section 14; Civil Procedure Rules, Orders 40-43B.

⁷³ Courts of Justice Law of 1960 (14/1960), section 41. See also: Civil Procedure Rules, Order 27 Rule 4.

⁷⁴ *Alpha Panaretti Ltd v Hamm*, Case No. 685/10, 22/7/2016, ECLI:CY:EDPAF:2016:A162.

⁷⁵ Iain Goldrein et al, *Commercial Litigation Pre-Emptive Remedies*, paras 300-301 cited in *Rual Trade Ltd and others v Raikov and others*, Case No. 3582/2011, 1/3/2013, ECLI:CY:EDLEF:2013:A87.

the case as regards the court's assessment of the evidence, where the court will elaborate on the admissibility and probative value of the evidence presented.

3.4 Types of decisions in litigation proceedings

The court may issue two types of decisions in litigation proceedings:

1) Damages – For example, the court may decide for the award of damages in a finding of tort of negligence (most frequently special damages and general damages)⁷⁶ as well as damages for breach of contract.⁷⁷

2) Orders – In the first place, the court may decide to issue orders in the context of interim and interlocutory judgments (in the sense given to the term in section 4.1 below). Furthermore, the court may issue orders in the context of making a final judgment on the dispute. Orders in a final judgment may include, among others, the court's finding of a liability of debt,⁷⁸ a declaratory relief,⁷⁹ an order to hand over possession of property,⁸⁰ an order annulling the transfer of property,⁸¹ etc.

As stated above, any “decision” other than the merits of the case will form part of the reasoning; the court will not issue a separate “decree” in this respect. For example, the court will first need to assess and “decide” on the admissibility and probative value of the evidence referred to before it can proceed to analyse and determine the legal issues at stake.

Decisions pertaining to matters such as the modification of a claim, withdrawal of a claim, joinder of parties, joinder of proceedings etc will be dealt with previously in the context of interim proceedings.⁸²

⁷⁶ *Siakalis v Kladas*, Case no.1717/10, 5/1/2018, ECLI:CY:EDLEM:2018:A3.

⁷⁷ *Theodosiou v Grigoriou and another*, Case No. 308/03, 22/06/2011, ECLI:CY:EDLAR:2011:A75.

⁷⁸ *Popular Bank of Cyprus and others v Apak Agro Industries Ltd and others*, Joined Cases 1201/92 and 2087/93, 9/7/2009, ECLI:CY:EDPAF:2009:A4.

⁷⁹ *Alpha Panaretti Ltd v Hamm*, Case No. 685/10, 22/7/2016, ECLI:CY:EDPAF:2016:A162.

⁸⁰ *Stelios Panayiotou and Sons Limited v Nicolaou*, Case No. 4845/12, 30/11/2018, ECLI:CY:EDLEM:2018:A500.

⁸¹ *National Bank of Greece (Cyprus) v Symeonidi and others*, Case No. 8216/07, 28/4/2017.

⁸² *Kouppa v Poullas Tsadiotis Limited*, Case No. 787/10, 9/2/2011, ECLI:CY:EDPAF:2011:A26.

(modification of a claim); *Bank of Cyprus Public Company Ltd v Bissenden and another*, Case No. 1566/11, 29/10/2014, ECLI:CY:EDPAF:2014:A206 (joinder of parties).

3.5 The operative and the reasoning part as part of a judgement

As stated above in section 3.4, any “decisions” on issues other than the merits of the case will form part of the court’s reasoning. In turn, the operative part will present very succinctly the decision of the court with reference to the relief sought in the claim (and where relevant the counterclaim) and issue the relevant order(s) and/or award compensation. Any reference to elements and parts of the reasoning will be very brief to clearly convey the final decision of the court.

For example:

‘From what I have tried to explain above during the analysis and evaluation of the testimony presented before me, and the rejection of the testimony of both parties as unreliable and without making any findings, my conclusion is to reject both the claim and the counterclaim. I consider that under the circumstances the more just order with respect to the costs is for each side to be burdened with its costs.’⁸³

In the above example, the court first “decided” that the testimony of both parties was unreliable, and then proceeded to reject both the claim and the counterclaim without making any findings with respect to the legal issues raised in the pleadings.

In the Cypriot legal system, the terms ‘interlocutory’ and ‘interim’ are used interchangeably when reference is made to orders of a temporary nature which are usually in effect until the final judgment of the court. Such orders are issued in the context of ‘interim judgments’. The Cypriot courts do not make a formal distinction between an ‘interim judgment’ and an ‘interlocutory judgment’ in the sense given in section 4.1 below. In the context of interim (intermediate) judgments, the courts will decide both on matters of a temporary nature as well as a huge array of issues of a formal/procedural nature, which may determine the continuation of the proceedings in part or in their entirety. Hence, all the decisions can be incorporated in a final or interim (intermediate) judgment depending on the circumstances.

⁸³ *Antoniou v Vasileiou*, Case No. 1726/07, 15/12/2009, ECLI:CY:EDLAR:2009:A126.

Provisional or protective measures may initially be issued separately during interlocutory proceedings. As discussed in section 4.1 below, the court may issue an interim/interlocutory order, ordering the respondents to refrain from taking an action for a specified period (prohibitory injunction). Alternatively, the court may order the respondents to perform a certain act (mandatory injunction). The order will remain in place ‘until the trial and the final completion of the case, or until the Court issues a newer order.’⁸⁴ Interlocutory injunctions issued on an ex parte basis are deemed as ‘returnable’. According to the Civil Procedure Law, ex parte orders will not remain in force longer than necessary and any persons affected by the order may (upon service of notice) appear before the court to object to it.⁸⁵ Upon hearing the parties, the court may decide that the order will remain in force until the completion of the case. In such an instance, the order becomes ‘absolute’, and thus in force, until the end of the case.⁸⁶ The court will return to provisional and protective orders for the purposes of the judgment, where it will make a final determination on the claims of the parties and the requested orders. Any provisional or protective measures may be annulled or become part of the judgment.

⁸⁴ *Georgiadi and others v Pangethriou Outdoor Living Ltd and others*, Case No. 2560/2013, 27/02/2014, ECLI:CY:EDLAR:2014:A54.

⁸⁵ Civil Procedure Law (CAP 6), section 9(3).

⁸⁶ *Makrides v Georgiou*, Case No. 1853/09, 30/06/2009, ECLI:CY:EDLEM:2009:A182.

4 Special aspects regarding the operative part

The operative part in the judgment encapsulates the outcome of the case and the resulting liability of the parties (if any) based on the claim and the counterclaim (if applicable). Where the relief sought is partially accepted/rejected, the operative part will specify which parts were accepted by the court and which parts were ultimately rejected and issue the relevant order(s) and/or award damages. Lastly, the operative part provides on the matter of the legal costs and which side(s) will pay for them.

Pursuant to section 47 of the Courts of Justice Law of 1960,⁸⁷ court judgments are binding on all the parties as soon as they are issued (unless there is an order to the contrary in the judgment itself). Generally, judgments do not contain a threat of enforcement as such in the operative part. Significantly, a successful party who obtains a judgment in their favour does not automatically obtain the relief sought. As stated above in section 3.2 above, as a matter of both law and practice, it is clearly understood that the obligation in the operative part is to be fulfilled by the defendant immediately, unless the operative part specifies otherwise. As provided by the Civil Procedure Law and the relevant rules of procedure, the courts have an array of powers to enforce compliance by parties who fail to obey the judgment and the

⁸⁷ Courts of Justice Law of 1960 (14/1960), section 47.

orders issued against them, including but not limited to the seizure and sale of the defendant's movable property, the sale of the defendant's immovable property and the registration of a charging order over the immovable property.⁸⁸

At the same time, the court has the power to compel compliance of its orders (whether such orders direct the doing of an act or prohibit it) by means of a fine, imprisonment or sequestration.⁸⁹ Notably, where the court issues an order which directs an act to be done (mandatory) or prohibits the doing of an act (prohibitory), the copy of the order which is to be served to the person required to obey it, shall incorporate an endorsement to the following effect:

'If you, the within-named A.B., neglect to obey this order, by the time therein limited, you will be liable to be arrested and to have your property sequestered.'⁹⁰

Section 41 of the Courts of Justice Law of 1960 provides that the courts have the discretionary power to issue binding declarations of rights, irrespective of whether any relief is claimed or could be claimed, or not.⁹¹ Hence, the courts may issue a declaratory relief in the absence of a consequential relief. According to the Supreme Court, the principles which regulate the issuance of a declaratory order or relief, in the absence of a special or consequential relief are encapsulated in Annual Practice 1960 on the interpretation of the old English Procedural Rules.⁹² In line with the Annual Practice of 1960, a claim for declaratory relief, without a claim for consequential relief, 'will be carefully watched; but properly employed it is useful'.⁹³ On most occasions, a claim for a declaratory relief will be accompanied by a claim for a consequential relief. Consequently, the operative part will refer to the outcome of a claim for declaratory relief to the extent that this is sought by the parties, together with any other claims, including payment of a judgment debt.⁹⁴

⁸⁸ Civil Procedure Law (CAP 6), section 14.

⁸⁹ Courts of Justice Law of 1960 (14/1960), section 42.

⁹⁰ Civil Procedure Rules, Order 42A Rule 1.

⁹¹ Courts of Justice Law of 1960 (14/1960), section 41. See also: Civil Procedure Rules, Order 27 Rule 4.

⁹² *Compania Naviera S.A. and others v Andrenal Shipping Company Ltd and others*, Admiralty Case No. 13/07, 13/1/2014, ECLI:CY:AD:2014:D18.

⁹³ *Ibid.*

⁹⁴ *Alpha Panaretti Ltd v Hamm*, Case No. 685/10, 22/7/2016, ECLI:CY:EDPAF:2016:A162.

A judgment which orders the payment of money is called 'judgment debt'. The person against whom the judgment ordering the payment of money is made is the 'judgment debtor'.⁹⁵ The operative part of the judgment finalises the debtor's obligation. The judgment specifies the debtor's obligation, the annual interest carried by the judgment debt until full repayment,⁹⁶ and which side(s) will pay for the costs.⁹⁷ Furthermore, the Court Registrar is instructed to calculate the legal costs, which will ultimately be approved by the Court. In specifying the debtor's obligation, the operative part may indicate whether it concerns a loan agreement, current account, payment of invoices etc.⁹⁸

4.1 Injunctions and interim judgements

In the case of a prohibitory injunction, the operative part will include the terms and conditions of the prohibition and its duration. According to section 32(1) of the Courts of Justice Law, such an injunction may be temporary/interlocutory or perpetual.⁹⁹ In an interlocutory injunction, the court will order the respondents to refrain from taking an action for a specified period. For example, the operative part in a prohibitory interlocutory injunction will specify that the prohibitory injunction will remain in place 'until the trial and the final completion of the case, or until the Court issues a newer order.'¹⁰⁰ Alternatively, a prohibitory injunction may provide that 'the interlocutory order previously granted becomes absolute, and as a consequence final, in force until the completion of the present case'.¹⁰¹ This is the case with respect to 'returnable' orders issued on an ex parte basis, upon proof on the part of the applicant as to the urgency of the matter or its peculiar circumstances.¹⁰² Section 9(3) of the Civil Procedure Law provides that:

⁹⁵ Civil Procedure Law (CAP 6), section 2.

⁹⁶ Courts of Justice Law of 1960 (14/1960), section 33.

⁹⁷ *Ibid*, section 43.

⁹⁸ *Popular Bank of Cyprus and others v Apak Agro Industries Ltd and others*, Joined Cases 1201/92 and 2087/93, 9/7/2009, ECLI:CY:EDPAF:2009:A4.

⁹⁹ Courts of Justice Law of 1960 (14/1960), section 32(1).

¹⁰⁰ *Georgiadi and others v Pangethriion Outdoor Living Ltd and others*, Case No. 2560/2013, 27/02/2014, ECLI:CY:EDLAR:2014:A54.

¹⁰¹ *Makrides v Georgiou*, Case No. 1853/09, 30/06/2009, ECLI:CY:EDLEM:2009:A182.

¹⁰² Civil Procedure Law (CAP 6), section 9(1).

'No such order made without notice shall remain in force for a longer period than is necessary for service of notice of it on all persons affected by it and enabling them to appear before the Court and object to it; and every such shall at the end of that period cease to be in force; unless the Court, upon hearing the parties or any of them, shall otherwise direct ; and every such order shall be dealt with in the action as the Court thinks just.'¹⁰³

On the date the order is fixed as returnable, the court will decide whether it should remain in force until the final judgment or whether it should be annulled.

On the other hand, a perpetual injunction is permanent. According to Halsbury's Laws of England, a perpetual injunction is 'based on a final determination of the rights of the parties'.¹⁰⁴ The operative part of a perpetual injunction will provide the final decision of the court with respect to the requested relief.

An interim (intermediate) judgment is defined as 'the judgement of the Court in any interim issue that emerges or arises during the proceedings'.¹⁰⁵ In the first place, interim judgments may decide on matters of a temporal nature (e.g. interlocutory orders) and the operative matter will be drafted accordingly (see below). In the second place, an interim judgment may determine an array of issues of a formal/procedural nature, which will determine the continuation of the proceedings. For example, an interim judgment may determine whether the court lacks jurisdiction to hear the claim. In this example, the operative part will set out the court's jurisdictional ambit and which side will pay for the costs.¹⁰⁶ Another example would be interim judgment pursuant to an application by a party to strike out the claim (or counterclaim), among others for disclosing no reasonable cause of action and for being frivolous or vexatious.¹⁰⁷ In this instance, the operative part will specify whether the court accepts or rejects the application (wholly or partially) and the costs. Moreover, the operative part may provide brief indications of the court's reasoning. In particular, the operative part may contain the reasons behind the rejection/acceptance of an application. For example, the court – as specified in the

¹⁰³ *Ibid*, section 9(3).

¹⁰⁴ Halsbury's Laws, Vol 24, 2009, para. 903.

¹⁰⁵ Procedural Regulation on the Timely Issuance of Judgments of 1986 (11/1986).

¹⁰⁶ *Cyprus Popular Bank Public Co Ltd v Vgenopoulos and others*, Case No: 8400/12, 31/1/2017, ECLI:CY:EDLEF:2017:A63.

¹⁰⁷ *Hellenic Bank Public Company Ltd v Dimitriou*, Case No. 2053/09, 08/06/2011, ECLI:CY:EDPAF:2011:A73.

operative part - has rejected an application to strike out a claim which did not have any prospects of success because the requirements of the law and case-law had not been met.¹⁰⁸

In an interlocutory judgment, the Cypriot courts may accept or reject a party's application for the issuance of a temporary order, known as an interim or interlocutory order. In doing so, the courts will assess whether an application satisfies the requirements set out by the law for the issuance of interim 'orders' The requirements for the issuance of such orders are set out in section 32 of the Courts of Justice Law of 1960.¹⁰⁹ In exercising its discretionary powers, the court will grant an interim order 'in all the cases where it appears to the court that it is fair or appropriate to do so'.¹¹⁰ The interim orders are subject to those terms and requirements deemed as fair by the court. Interim orders which were issued without a reasonable cause may be cancelled or amended at any stage by the court.¹¹¹

Hence, the operative part in an interlocutory judgment will include whether the court accepts or rejects the application for an interim order, and in those cases where the order is granted, the court will specify the terms and requirements pertaining to the order and its duration. For example, the operative part may specify that the order will remain in place 'until the trial and the final completion of the case, or until the Court issues a newer order.'¹¹²

4.2 The operative part and dismissal of actions

In Cyprus, the operative part of civil law judgments is drafted based on the claims put forward by parties in the claim and counterclaim (if applicable). The operative part sets out the obligations of the debtor. Such obligations are not alternative; the debtor may not decide among several modes of fulfilling a claim. However, in cases

¹⁰⁸ *Nicolaide and Medansyl Limited v Mediterranean Hospital of Cyprus (MHOC) and others*, Case No. 1257/2015, 23/7/2019, ECLI:CY:EDLEM:2019:A413.

¹⁰⁹ Courts of Justice Law of 1960 (14/1960), section 32.

¹¹⁰ *Ibid*, section 32(1).

¹¹¹ *Ibid*, section 32(2).

¹¹² *Georgiadi and others v Pangetrion Outdoor Living Ltd and others*, Case No. 2560/2013, 27/02/2014, ECLI:CY:EDLAR:2014:A54.

involving multiple defendants, the operative part will specify whether the obligations (and costs) are payable ‘jointly and/or severally’ among the defendants.¹¹³

Pursuant to Order 27 of the Civil Procedure Rules, any party is entitled to raise any point of law by the pleadings. Such point of law ‘shall be disposed of by the Court at any stage that may appear to it convenient.’¹¹⁴ If the Court is of the opinion that its decision on the point of law so raised ‘substantially disposes of the whole action, or of any distinct cause of action, ground of defence, counter-claim, or reply therein, the Court may thereupon dismiss the action or make such other order therein as may be just.’¹¹⁵ Furthermore, the court may strike out any pleading for disclosing no reasonable cause of action. In such a case, or when the action or defence is deemed to be ‘frivolous or vexatious’, the Court ‘may order the action to be stayed or dismissed, or judgment to be entered accordingly as may be just.’¹¹⁶

Where the claim is partially or wholly dismissed on substantive grounds, the operative part will indicate so succinctly but clearly, with reference to the relief sought in the claim (and where relevant the counterclaim). If the relief sought is partially rejected, the operative part will specify which parts were accepted by the court and which parts were ultimately rejected, issue the relevant order(s) and decide on the legal costs. However, the operative part will not elaborate on the substantive grounds themselves, on the basis of which the claim was wholly or partially rejected. The substantive grounds will be discussed earlier in the main body of the judgment. As seen from the examples below, the operative part will incorporate very little to no reference to the substantive grounds at play which determined the conclusions of the court.

¹¹³ *Cyprus Electricity Authority v Larnaca Municipality and others*, Case No. 2586/2011, 12/4/2017, ECLI:CY:EDLAR:2017:A59.

¹¹⁴ Civil Procedure Rules, Order 27 Rule 1

¹¹⁵ *Ibid*, Order 27 Rule 2.

¹¹⁶ *Ibid*, Order 27 Rule 3.

Example 1: total rejection of claim (and counterclaim):

‘From what I have tried to explain above during the analysis and evaluation of the testimony presented before me, and the rejection of the testimony of both parties as unreliable and without making any findings, my conclusion is to reject both the claim and the counterclaim. I consider that under the circumstances the more just order with respect to the costs is for each side to be burdened with its costs.’¹¹⁷

Example 2: total rejection of claim (acceptance of counterclaim):

‘Following the above, I conclude that this action should be dismissed and is dismissed with costs in favor of Defendant 1 and 2 and against the Claimant.

With regard to the Counterclaim, a decision is issued in favor of Defendant 1 (Counterclaim Claimant) and against the Claimant (Counterclaim Defendant 1) for the amount of €... plus legal interest with costs in favor of Defendant 1 (Counterclaim Claimant) and against the Claimant (Counterclaim Defendant 1).

Costs will be calculated by the Registrar and approved by the Court.’¹¹⁸

Example 3- partial rejection of claim:

‘Based on all the above, the action is partially successful and an order is issued stating that when calculating the inheritance share of Defendant 3, the amount of £... is to be taken into account, as indicated above, at an interest of ...% per annum from ... until distribution.

The said amount shall be deducted from her inheritance share for the benefit of the claimants.

As far as costs are concerned, a matter at the discretion of the Court, give then nature of the case and the fact that the action is partially successful, I consider that it is fair not to award any costs in favour of any party. Each side shall bear its own costs.’¹¹⁹

¹¹⁷ *Antoniou v Vasileiou*, Case No. 1726/07, 15/12/2009, ECLI:CY:EDLAR:2009:A126.

¹¹⁸ *SKS Development Sons Limited v La Lenia Jewellery Ltd and others*, Case No: 165/06, 13/05/2011.

¹¹⁹ *Kyriakidi and others v Dikiqoropoulou and another*, Case No. 12023/04, 25/06/2008, ECLI:CY:EDLEF:2008:A137.

4.3 Acceptance or rejection of claims on procedural grounds

A court judgment may accept or reject a claim (partially or wholly) on formal/procedural grounds. One such example concerns the jurisdiction of the court to hear a case (or lack thereof). It is the clear position of the Supreme Court that challenges pertaining to the jurisdiction of the court may be undertaken at any stage during the proceedings.¹²⁰ Thus, the matter of jurisdiction may be determined as a preliminary point of law or as part of the final judgment. When presented as a preliminary issue, its disposition will determine whether the action (or part of it) will continue henceforth. The operative part will set out the court's jurisdictional ambit and which side will pay for the legal costs.¹²¹ Alternatively, but more rarely, the question of jurisdiction will be disposed of as part of a final judgment. If the court determines that there is lack of jurisdiction, it may dismiss the case altogether (or partially) or refer it to the appropriate court. Hence, the operative part will reflect this outcome and specify the legal costs.¹²² The same approach is followed in other cases as well, such as cases where the prescribed time for the filing of the claim has elapsed.¹²³ The operative part will explicitly dismiss the claim and specify the legal costs. Where relevant, the operative part may also incorporate the court's decision with respect to any other remedies requested by the parties (e.g., to set aside and/or strike out part or the whole action pursuant to Order 27 Rule 3 of the Civil Procedure Rules).¹²⁴

In civil proceedings in Cyprus, it is not possible for the debtor to invoke set-off whereby the claim and the counterclaim may be extinguished (completely or to an extent).¹²⁵ Consequently, the operative part makes no reference to this. The operative part may specify the debt of the defendant pursuant to the successful claim (wholly or partially) of the claimant. At the same time, if applicable, the operative part will specify separately the debt of the claimant based on a successful counterclaim (wholly or partially) raised by the defendant.¹²⁶ In instances, the court

¹²⁰ *Theocharous v Pastelli* (1993) 1 CLR 240, 245.

¹²¹ *Cyprus Popular Bank Public Co Ltd v Vgenopoulos and others*, Case No: 8400/12, 31/1/2017, ECLI:CY:EDLEF:2017:A63.

¹²² *Ioannou v Nicolaou*, Case No. 1987/05, 22/1/2015, ECLI:CY:EDLEF:2015:A17.

¹²³ *Papadimitri v Papadopoulos*, Case No. 3243/06, 21/4/2008, ECLI:CY:EDPAF:2008:A27.

¹²⁴ Civil Procedure Rules, Order 27 Rule 3.

¹²⁵ *Heatron Co. Ltd v Nicolaou* (1999) 1(A) CLR 557.

¹²⁶ *J. Sardalos and Sons Ltd v. C. Sardalou*, Case N. 58/07, 13/1/2015, ECLI:CY:EDAMM:2015:A2.

may reject completely both the claim and the counterclaim.¹²⁷ Alternatively, the court may reject the claim in its entirety and accept the counterclaim.¹²⁸ Notably, a set off may take place with respect to the costs: ‘A set-off for damages or costs between parties may be allowed.’¹²⁹

4.4 Structure of the operative part

The Cypriot legal system does not provide any specifications as a matter of law or court rules with respect to the structure and substance of the operative part of the judgment. As a matter of practice, the operative part will present very succinctly the decision of the court with reference to the relief sought in the claim (and where relevant the counterclaim). In this respect, if the relief sought is partially accepted/rejected, the operative part will specify which parts were accepted by the court and which parts were ultimately rejected, issue the relevant order(s) and decide on the legal costs (see the examples provided in section 4.2 above). However, the judgment of the court, including its operative part containing the order(s), must give expression to the manifest intention of the court.¹³⁰ Any accidental mistakes or omissions, as a result of which the judgment or order(s) fail to give expression to the intention of the Court, may be corrected pursuant to the Civil Procedure Rules¹³¹ and the inherent powers of the Court (for further detail see the discussion section 4.7 below).

As a matter of practice, the operative part will present very succinctly the decision of the court with reference to the relief sought in the claim (and where relevant the counterclaim) and issue the relevant order(s) and/or award compensation. On most occasions, the operative part will start as follows: ‘Based on the above...’, ‘Following the above...’ etc.

Any reference to the reasoning of the court (if made), will be very brief. For example: ‘From what I have tried to explain above during the analysis and evaluation of the testimony presented before me, and the rejection of the testimony of both parties as unreliable and without making any findings, my conclusion is to reject both the claim

¹²⁷ *Antoniou v Vasileiou*, Case No. 1726/07, 15/12/2009, ECLI:CY:EDLAR:2009:A126.

¹²⁸ *SKS Development Sons Limited v La Lenia Jewellery Ltd and others*, Case No: 165/06, 13/05/2011.

¹²⁹ Civil Procedure Rules, Order 59 Rule 7.

¹³⁰ *Sofocli v Leonidou* (1988) 1 CLR 583, 587.

¹³¹ Civil Procedure Rules, Order 25 Rule 6.

and the counterclaim. I consider that under the circumstances the more just order with respect to the costs is for each side to be burdened with its costs.¹³²

Pursuant to section 47 of the Courts of Justice Law of 1960, court judgments are binding on all the parties as soon as they are issued (unless there is an order to the contrary in the judgment itself).¹³³ In Cyprus, the debtor is not specifically ‘ordered’ to perform by the wording of the operative part. The operative part only finds the debtor ‘liable to pay’ a certain amount (plus interest and legal costs).¹³⁴ In practice, it is clearly understood that the orders in the operative part, including the ones for the payment of debt, are to be performed by the debtor immediately, unless the operative part specifies otherwise (see section 3.2 above).

4.5 Set off in civil proceedings

In civil proceedings in Cyprus, it is not possible for the debtor to invoke set-off with respect to reciprocal but independent obligations.¹³⁵ The Supreme Court distinguished between the banking right to a set-off and the issue of set-off arising from reciprocal but independent obligations. The latter does not apply to civil proceedings in Cyprus. Rather, it creates a cause for a separate action or counterclaim.¹³⁶ The issue of bank off-setting is an accounting act to determine the customer’s account balance and ‘does not create an independent cause of action or claim.’¹³⁷

Section 33 of the Court of Justice Law of 1960, regulates interest rates in the context of any court proceedings for the collection of any debt for which an interest is payable.¹³⁸ According to section 33(1), the court will award an interest either on the basis of an agreement between the parties or otherwise as provided by law, starting from the period the interest started accruing until final repayment. The interest shall not exceed the maximum statutory rate. Moreover, section 33(2) provides that every court judgment (including the part relating to the legal costs) shall bear a legal interest

¹³² *Antoniou v Vasileiou*, Case No. 1726/07, 15/12/2009, ECLI:CY:EDLAR:2009:A126.

¹³³ Courts of Justice Law of 1960 (14/1960), section 47.

¹³⁴ *Popular Bank of Cyprus and others v Apak Agro Industries Ltd and others*, Joined Cases 1201/92 and 2087/93, 9/7/2009, ECLI:CY:EDPAF:2009:A4.

¹³⁵ *Heatron Co. Ltd v Nicolaou* (1999) 1(A) CLR 557.

¹³⁶ Civil Procedure Rules, Order 19 Rule 3.

¹³⁷ *Antoniou and another v Popular Bank* (1994) 1 CLR 720, 725.

¹³⁸ Courts of Justice Law of 1960 (14/1960), section 33.

per annum, from the date of filing the action until the final repayment of the debt. This legal interest is reviewed every December by the Minister of Finance.¹³⁹

The court has discretion to vary the award of interest as follows: a) on the entire amount awarded by the judgment, for a period between the date of filing the action until the date on which the judgment is issued; b) on part of the amount awarded by the judgment, for the whole or only part of the period between the date of filing the action until the date on which the judgment is issued. In cases of fraud, the interest accrues from the date the actionable right was created, regardless of whether an action is pending.¹⁴⁰

The wording used in the operative part reflects, but does not explicitly refer, to the above legal basis on the award of interest in judgments ordering payment. The operative part will specify: 1) the amount of money awarded by the judgment; 2) the interest (specifying when this is the legal interest instead of the interest agreed between the parties); 3) whether the interest applies to the entire amount or part of it; and 4) the period of time (unless the court decides otherwise, it covers the period between the filing of the claim until full repayment of the debt).

Example of a typical wording:

The Court found in favor of the defendant and decided that the claimants would pay the defendant ‘the total amount of €..., plus legal interest on the total amount from the date of issuance of the decision.’

In this case, as the court explained in its reasoning, it would be legally incorrect and unfair to award the higher interest rate provided by the agreement between the parties. On the same basis, the court decided that the interest would accrue from the delivery of the judgment and not the filing of the claim.¹⁴¹

¹³⁹ *Ibid*, section 33(4).

¹⁴⁰ *Ibid*, section 33(2).

¹⁴¹ *Constantinidi and another v Mindoras Estates Ltd*, Case No. 1791/2005, 7/6/2013, ECLI:CY:EDPAF:2013:A154, para 204.1.

4.7 Contents of the operative part

Order 13 of the Civil Procedure Rules provides for the 'Joinder of the Causes of Action'. According to Rule 1 of the Order, 'the plaintiff may unite in the same action several causes of action' unless the court decides that it is not convenient to dispose such causes of action together.¹⁴² At the same time, when there are claims by claimants jointly, such claims 'may be joined with claims by them or any of them separately against the same defendant.' Order 14 of the Civil Procedure Rules further provides for the 'Consolidation of Actions'. Rule 2 of the Order states:

'When two or more actions are pending in the same Court, whether by the same or different plaintiffs against the same or different defendants, and the claims of such actions involve a common question of law or fact of such importance in proportion to the rest of the matters involved in such actions as to render it desirable that the actions should be consolidated, the Court or a Judge may order that they be consolidated.'¹⁴³

The operative part will reflect the court's decision on the relief sought by the claimants (and defendants when there is a counterclaim). Significantly, the structure and the content of the operative part does not make a distinction in cases where there has been a single claim or a joinder of claims, and/or a joinder of actions. The operative part will clearly state the decision of the court based on the claims and list the relevant orders.

Example of a typical wording:

"The claim is dismissed with costs in favour of the Defendant and against the Claimant as these will be calculated by the Registrar on the scale of the action and will be approved by the Court.

In the context of the counterclaim, a decision is issued in favour of the Defendant and against the Claimant for the amount of plus interest at% per annum, from until repayment.

¹⁴² Civil Procedure Rules, Order 13 Rule 1.

¹⁴³ *Ibid*, Order 14 Rule 2.

The following recognition/declaratory decisions are also issued:

Recognition/declaratory decision that the agreement dated ... was legally and normally terminated by the defendant.

Recognition/declaratory decision that the claimant violated the agreement dated... duly and normally terminated by the defendant.¹⁴⁴

The operative part of civil law judgments does not refer to an attachment/index. The operative part will refer to the liability of the parties as it may arise on the basis of the claim (and of the counterclaim where relevant). At the same time, where appropriate, appendices containing evidence may be added to the judgment. Such appendices will be added at the end of the judgment after the operative part. For example, in defamation proceedings it is customary to record the disputed publications in the main body of the court judgment, so that the reader has a clear picture of the publications when reading the judgment. However, in *Papasavva v "ARKTINOS Ltd" Publications and others*, due to the large volume of publications, the District Court decided that it would be easier to append the publications to the judgment (according to their evidence number), instead of incorporating them in the judgment itself.¹⁴⁵

The Civil Procedure Rules give the power to the court to correct clerical mistakes in the pleadings, judgments or orders which arise from an accidental slip or omission, depending on the nature and extent of the mistake.¹⁴⁶ The court may proceed to make the correction following an application by one of the parties. Significantly, no right to appeal arises on this basis. This is the so-called 'slip rule' and it reflects Order 28 Rule 11 of the old English Civil Procedure Rules.

¹⁴⁴ *Alpha Panaretti Ltd v Hamm*, Case No. 685/10, 22/7/2016, ECLI:CY:EDPAF:2016:A162.

¹⁴⁵ *Papasavva v "ARKTINOS Ltd" Publications and others*, Joined Cases 7590/09 and 4482/10, 8/7/2016, ECLI:CY:EDLEF:2016:A433.

¹⁴⁶ Civil Procedure Rules, Order 25 Rule 6.

According to The Annual Practice 1959, when applying this rule, any error or omission ‘must be an error in expressing the manifest intention of the Court; the Court cannot correct a mistake of its own in law or otherwise, even though apparent on the face of the order’.¹⁴⁷ Similarly, the Supreme Court of Cyprus has stated that the slip rule is ‘intended to harmonize the text of the decision with the obvious intention of the court’.¹⁴⁸ Such a power may be exercised pursuant to Order 25 Rule 6 of the Civil Procedure Rules and the Court’s inherent powers to correct errors or omissions in the order or judgement. Such a power is not absolute; it is ‘limited to errors owing to failure to give expression in the order or judgment to the manifest intention of the Court’.¹⁴⁹ The case of *Lazarou v Nemesis Construction Company and another* clearly encapsulates the legal ramifications when the operative part is incomplete, undermined, incomprehensible or inconsistent:

‘in order for the «slip rule» to apply, it must be established that some parts of the decision are correct and some are wrong and in need of correction, but the finality of court judgments, including those at the level of the Court of Appeal, leaves no room for the correction of judgments, with the inclusion of orders which concern substantive arrangements and which cannot be classified as errors.’¹⁵⁰

The operative part of the judgment finalises the debtor’s obligation. The judgment specifies the debtor’s obligation, the annual interest rate carried by the judgment debt until full repayment,¹⁵¹ and which side(s) will pay for the costs.¹⁵²

In determining the amount of the debt, the judgment may deviate from the amount indicated by the claimant in the claim. Where appropriate, the judgment will award the claimant a lower amount than the one claimed. For example, in a claim for negligence, the court will decrease the amount of damages where there is contributory negligence on the part of the claimant. The decrease will reflect the percentage of fault on the part of the claimant.¹⁵³

¹⁴⁷ The Annual Practice 1959, p 633 cited in *Alpha Bank Cyprus Ltd v Emil Marie Ltd and others*, Case no: 6851/15, 27/03/2018, ECLI:CY:EDLEF:2018:A192.

¹⁴⁸ *Sivitanidis v Charalambous* (1993) 1 CLR 179, 183.

¹⁴⁹ *Sofoli v Leonidou* (1988) 1 CLR 583, 587.

¹⁵⁰ *Lazarou Theodoros v Nemesis Construction Company and another* (2012) 1 CLR 1101.

¹⁵¹ Courts of Justice Law of 1960 (14/1960), section 33.

¹⁵² *Ibid*, section 43.

¹⁵³ *Siakallis v Kladus*, Case No. 1717/10, 5/1/2018, ECLI:CY:EDLEM:2018:A3.

Significantly, the court may not deviate upward from the amount claimed. Notably, the jurisdiction of the different District Court judges depends on the disputed amount or the value of the dispute. The jurisdiction of the District Court Judges is set out in section 22 of the Courts of Justice Law of 1960:¹⁵⁴

- District Judges – jurisdiction to try claims below €100,000
- Senior District Judges – jurisdiction to try claims between €100,000 and €500,000
- Presidents of the District Court - jurisdiction to try claims above €500,000

¹⁵⁴ Courts of Justice Law of 1960 (14/1960), section 22.

5 Special aspects regarding the reasoning

The reasoning of judgments is mandated by article 30(2) of the Constitution of Cyprus (‘Judgment shall be reasoned...’). The Constitution imposes a duty on the Cypriot courts to comply with the judicial standards encapsulated in article 30(2), including the provision of reasoned judgments. At the same time, the provision bestows on the litigant a corresponding right ‘to have a judicial pronouncement affecting him, duly reasoned.’ Hence, reasoning is ‘a constituent element of a valid judicial pronouncement’ and failure on the part of a court to observe this constitutional requirement, renders its verdict a nullity.¹⁵⁵ More broadly, due reasoning is also warranted ‘by the interests of the general public in the proper administration of justice. The impression of arbitrariness is the one element that must constantly be kept outside the sphere of judicial deliberations’.¹⁵⁶

A duly reasoned judgment must meet the following minimum requirements: ‘evidence must be analysed by reference to the matters in issue, and there must be a clear statement of the findings of the Court coupled with an unambiguous pronouncement of the outcome of a case.’¹⁵⁷

¹⁵⁵ *Psaras and another v. Republic* (1987) 2 CLR 132.

¹⁵⁶ *Neophytou v The Police* (1981) CLR 195, 198.

¹⁵⁷ *Psaras and another v. Republic* (1987) 2 CLR 132, 137. See also: *Pioneer Candy Ltd v Tryfon & Sons* (1981) 1 CLR 540.

There is flexibility in the order to be followed when drafting the reasoning provided that the court presents the reasons for its decision by reference to the law and evidence. The Supreme Court's approach on the matter was clearly presented in the *Psaras* case:

‘The requirement of due reasoning does not oblige the court to reproduce the whole of the evidence in its evidential analysis, or refer to every detail of it. The reasoning of a judgment may take a variety of forms. What is required of a Court of law is that reasons should be given for its decision and those reasons should relate to the law applicable and be referable to the evidence given in the cause, so that it may appear that the verdict is not merely the reaction of the Court to the dispute but warranted by the law applicable and the evidence adduced.’¹⁵⁸

5.1 Sufficient reasoning

According to the Supreme Court, ‘What is sufficient «reasoning» depends largely on the circumstances of each particular case.’¹⁵⁹ Any gaps or omissions in the deliberations of the court will not deprive the judgment of reasoning ‘but make it vulnerable to be set aside for logical inconsistency, provided the inconsistency is material to the deliberations of the Court, or error in law.’¹⁶⁰ For example, in the case of *Hambou and others v Michael and another*, the Supreme Court found that the first instance judgment was not duly reasoned because it merely contained the verdict of the judge ‘without any reasoning at all having been given in support of such verdict.’¹⁶¹ On this basis, the Supreme Court set aside the judgement and ordered a retrial.

As stated above, the sufficiency of the reasoning will depend on the circumstances of the case. Based on the relevant authorities, the issue frequently faced by the Supreme Court as regards the reasoning of judgments, is not whether the reasoning is too detailed. Rather, the main issue has been whether the reasoning sufficiently conveys the deliberations of the court for reaching its verdict, and whether any gaps

¹⁵⁸ *Psaras and another v. Republic* (1987) 2 CLR 132, 159-160.

¹⁵⁹ *Poyiatzis v Pilavakis and another* (1988) 1 CLR 411, 420.

¹⁶⁰ *Ibid*, 424. See also: *Ioannidou v Dikeos* (1969) 1 CLR 235, 239.

¹⁶¹ *Hambou and others v Michael and another* (1981) 1 CLR 618, 619.

or omissions in the reasoning undermine the logical consistency of the judgement. On such occasions the verdict is a nullity and, therefore, the judgment is set aside.

As discussed in section 3 above, a core element of a civil law judgment is the court's reference to the claims of the parties (and counterclaims where relevant). The court will often refer to the claims of the parties at the beginning of the judgment. Reference to those claims will also be made throughout the judgment to the extent that this is relevant and necessary. As a matter of practice, the court will first set out the claimant's side as provided foremostly in the claim. Subsequently, the court will discuss the defence put forward by the defendant (and any counterclaims). In this respect, the judgment may refer to specific extracts from the claim and the defence (and counterclaim if relevant), the closing speeches of the lawyers etc.¹⁶² The court must also assess the evidence referred to by the parties and any witness testimony (including testimony of the parties themselves).¹⁶³ Subsequently, the court will deliberate on the legal issues at play to reach its findings. The parties' statements are an indispensable part of this process. According to the Supreme Court, the court must give reasons for its decision 'and those reasons should relate to the law applicable and be referable to the evidence given in the cause, so that it may appear that the verdict is not merely the reaction of the Court to the dispute but warranted by the law applicable and the evidence adduced.'¹⁶⁴

A duly reasoned decision is expected to distinguish between the positions of the parties and the court's assessment. As stated in section 5 above, the court, in providing reasons for its decision, must relate those reasons to the applicable law and the evidence presented by the parties. In *A.N. Stasis Estates Co Ltd*, the Supreme Court found that the reasoning of the first instance court was inadequate, general, and vague. The first instance court had made its findings after the simple repetition of conflicting testimony. In a case where numerous reasons were brought forward alleging misconduct; it was expected on the part of the court to engage with and analyse the arguments raised in order to show how it came about to its decision. In view of this, the Supreme Court decided that the brevity of the first instance decision 'essentially leads to a denial of justice and the arbitrary rejection of the appellants'

¹⁶² *Alpha Bank Cyprus Ltd v. Prestos Confectionery Ltd and others*, Case No. 330/06, 30/1/2015, ECLI:CY:EDPAF:2015:A17.

¹⁶³ *Constantinidi and another v Mindoras Estates Ltd*, Case No. 1791/2005, 7/6/2013, ECLI:CY:EDPAF:2013:A154.

¹⁶⁴ *Psaras and another v. Republic* (1987) 2 CLR 132, 159-160.

application.¹⁶⁵ Hence, a judgment which does not sufficiently explain and distinguish between the parties' statements and the assessment of the court lacks sufficient reasoning is in breach of article 30(2) of the Constitution.

5.2 Addressing procedural inquiries and challenges in the reasoning part

Where necessary, the reasoning of a court judgment will address procedural prerequisites and applications pertaining to the proceedings, including those raised after the filing of the claim. One such example of a procedural prerequisite concerns the jurisdiction of the court to hear a case (or lack thereof). A challenge to the jurisdiction of the court may be raised at an early part in the proceedings and be disposed of as a preliminary point of law by means of an interim judgment. This could be the case when the issue of jurisdiction is raised by the Defendant in the Defence and/or an application is made to dispose of the matter before the trial stage.¹⁶⁶

A challenge to the jurisdiction of the court may also be raised at a later stage of the proceedings (e.g., during the closing speeches of the counsels). Here, the question of jurisdiction will be disposed of as part of a final judgment. If the court determines that there is lack of jurisdiction, it may dismiss the case altogether (or partially) or refer it to the appropriate court. Hence, the operative part will reflect this outcome and specify the legal costs.¹⁶⁷ The reasoning of the court is always an indispensable part of the court's judgment as regards procedural prerequisites and applications. In the former case, the court's conclusion will determine whether the action (or part of it) will continue henceforth. In the latter case, the determination of a procedural prerequisite must take place before the court can proceed to assess the legal issues at stake.

¹⁶⁵ *A. N. Stasis Estates Co Ltd v G.M.P. Katsambas Ltd* (1998) 1 CLR 2195.

¹⁶⁶ *I.S.G. Developers Limited and another v Bank of Cyprus Public Company Ltd*, Case No.1664/16, 21/6/2016, ECLI:CY:EDLEF:2016:A383.

¹⁶⁷ *Ioannou v Nicolaou*, Case No. 1987/05, 22/1/2015, ECLI:CY:EDLEF:2015:A17.

Pursuant to Order 27 Rule 1 of the Civil Procedure Rules, any party is entitled to raise any point of law by the pleadings. Such point of law ‘shall be disposed of by the Court at any stage that may appear to it convenient.’¹⁶⁸ According to the Supreme Court, only ‘pure issues of law’ may be dealt with under Order 27 Rule 1 ‘which if decided in one way are going to be decisive of litigation between the parties’.¹⁶⁹ The court may only decide such an issue as a preliminary point of law when the facts giving rise to the legal issues are undisputed. When the facts are unsettled the best course is to proceed to the hearing of the whole action under Order 33 of the Civil Procedure Rules. Hence, where appropriate, the court will dispose of independent procedural issues, initially raised as preliminary points of law, in the final judgment of the court.

The reasoning encompasses the court’s reasons for deciding the case, including the rule of law (*ratio decidendi*) on which the decision is based. The Supreme Court has distinguished between the *ratio decidendi* of the case and the result of the case as follows:

‘The ratio of the judicial decision (*ratio decidendi*) is the rule of law on which the result of the decision is based, in contrast to its result for which a *res judicata* is created (see *Chanvery Lane Safe Deposit eta v IRC* [1966] 1 ALL ER 1 (HL); *Eleftheriou-Kaga v Democracy* (Case No. 494/87 13.2.1989)). Binding is the rule of law that directly supports the decisions and is inextricably linked to the outcome, as opposed to the part of the reasoning, the development of which is not objectively necessary for the decision.’¹⁷⁰

¹⁶⁸ Civil Procedure Rules, Order 27 Rule 1.

¹⁶⁹ *Malachtou v Armefti and another* (1984) 1 CLR 548, 554.

¹⁷⁰ *Mavrogenis v House of Representatives and others* (1996) 1 CLR 315, 332-333

6 Effects of judgments

6.1 The objective dimension of res judicata

The well-known rule of res judicata and the importance for its application are explained, with reference to all important decisions on the subject over time, by D. Iliadis, in the decision of *Andriani Charalambous v Marias Charalambous*.¹⁷¹

The notion of res judicata in common law is based on two principles: the principle of the public interest benefit from the final adjudication of a dispute and the principle of the exclusion of harassment of any person twice on the same subject. The application of the doctrine of res judicata presupposes the finality of the judgment, identification of parties and identification of relevant issues. As the court underlined in the case of *Acuac Inc. v Frederickou Schools Co. Limited and Michael Frederickou*,¹⁷² the two principles founding the doctrine of res judicata is the Interest rei publicae ut sit finis litium (the res judicata of a dispute is for the public interest) and the Nemo debet bis vexari pro eadem causa (no one should be harassed twice for the same matter).

¹⁷¹ *Andriani Charalambous v Marias Charalambous* (2008) 1 CLR 1298.

¹⁷² *Acuac Inc. v Frederickou Schools Co. Limited and Michael Frederickou* (2014) 8809/03 and 4036/08, ECLI:CY:EDLEF:2014:A133.

As a matter of general policy of law, the failure of a party to develop their argumentation or to bring a testimony regarding anything that could have supported their claim or defence during the court proceedings does not justify or allow new court proceedings for the subjects omitted. This would mean the partial adjudication of the dispute as per the party's choice and their perpetuation. Thus, the principles of finality of judgments and *res judicata*, which is socially imperative, would be negatively affected. This reasoning was developed in the case of *K.S.R. Commercio S.A. and others v. Bluecoral Navigation Ltd.*¹⁷³

To avoid submitting numerous different claims, the doctrine of *res judicata* has been extended to cover all the causes of action that a party could include in its lawsuits after a reasonable investigation. Failure to do so deprives the party of the right from bringing a new claim. The rule applies not only to matters which had been considered in the first proceedings, but also to any matter which was closely connected with that procedure and which the parties, with reasonable caution, could have raised. Thus, once a judgment is *res judicata*, the same dispute cannot be re-litigated. A thorough discussion of this doctrine was developed in the case of *Fofis Iliadou- Kalispera v Sokrati Iliadi and others.*¹⁷⁴

The doctrine of *res judicata* applies to every point properly belonging to the subject of litigation and which the parties, exercising reasonable diligence might have brought forward, at the time. For this purpose, the decision must be given by a tribunal exercising judicial functions under the law of Cyprus or, in the case at first instance, the law of the foreign state. Decisions include judgments, orders, decrees, sentences, and declarations. It is irrelevant whether the jurisdiction was of first instance or appellate. A default judgment (or order) is a judicial decision and therefore can create a *res judicata* too. It is irrelevant whether the default was failing to appear, file or prosecute/resist an appeal.

Order 34 of Civil Procedure Rules regulates the entry of a judgment. Unless the Court has directed that a judgment be not drawn up until a certain date or until a certain event has happened, every judgment shall, on the application of any party to the Registrar, be entered in a book to be kept for the purpose. Every judgment when

¹⁷³ *K.S.R. Commercio S.A. and others v. Bluecoral Navigation Ltd* (1995) 1 CLR 309.

¹⁷⁴ *Fofis Iliadou- Kalispera v Sokrati Iliadi and others*, Case No. 4675/04, 2/9/2009, ECLI:CY:EDLEF:2009:A132.

entered shall be dated as of the day on which it was pronounced, and shall, save where it otherwise directs, take effect from that date, and a note shall be made in the book in which it is entered of the date of entry. In other words, a judgment becomes *res judicata* at the day on which it was pronounced, thus the doctrine has immediate effect in Cyprus. Where any judgment is given subject to the filing of any affidavit or production of any document, the Registrar shall examine the affidavit or document produced, and if the same shall be regular and contain all that is by law required, the judgment shall be entered accordingly.

The exercise of the right to appeal does not affect the *res judicata* effects of a judgment. As the Cyprus courts have reaffirmed several times a judgment in a court of first instance (District Courts) is *res judicata*, irrespective of whether an appeal is pending. Judges rely on the argument developed in *Spencer Bower and Handley: Res Judicata*: ‘A judgment can be final, although it may be reversed or varied by an appellate court, and is under appeal when set up as *res judicata*’.¹⁷⁵ This can also be supported by Order 35, Rule 18 of Civil Procedure Rules which establishes that an appeal shall not operate as a stay of execution or of proceedings under the decision appealed from except so far as the Court appealed from or the Court of Appeal, or a Judge of either Court, may order; and no intermediate act or proceeding shall be invalidated, except so far as the Court appealed from may direct.

6.1.1 Treatment of *res judicata* by the Cypriot courts

The Supreme Court in the case of *Mavrogenis v House of Representatives and others*¹⁷⁶ commented on which parts of a judgment are *res judicata*: ‘The ratio of the judicial decision (*ratio decidendi*) is the rule of law on which the result of the decision is based, in contrast to its result for which a *res judicata* is created (see *Chanvery Lane Safe Deposit eta v IRC* [1966] 1 ALL ER 1 (HL); *Eleftheriou-Kaga v Democracy* (Case No. 494/87 13.2.1989)). Binding is the rule of law that directly supports the decisions and is inextricably linked to the outcome, as opposed to the part of the reasoning, the development of which is not objectively necessary for the decision.’¹⁷⁷

¹⁷⁵ K.R. Handley, 2009, p. 75.

¹⁷⁶ *Mavrogenis v House of Representatives and others* (1996) 1 CLR 315.

¹⁷⁷ *Ibid*, paragraphs 332-333.

‘Where the decision necessarily involves a judicial determination of some issue of law or fact, because it could not have been legitimately or rationally pronounced without determining or assuming a particular answer, that determination, though not expressed, is an integral part of the decision’.¹⁷⁸ The courts in Cyprus follow this rule, by also referring to the English case of *R v. Hartington Middle Quarter Inhabitants*.¹⁷⁹ In other words, *res judicata* may be demonstrated both in respect of the decisions of the Court which are directly related to the point in question which the Court is called upon to examine, as well as in respect of indirect decisions of the Court which were necessary for the Court to reach its final decision.

In *Acuac Inc. v Frederickou Schools Co. Limited and Michael Frederickou*¹⁸⁰ the court summarised that the principle of *res judicata* not only covers issues that were included in previous court proceedings brought by the claimant against the defendant, but also issues that could have been included in order to ensure that all issues that could have been disputed in the court are examined. This was emphasised in both English and Cypriot case law. One of the most authentic formulations of this principle was made by Sir James Wigram, V-C in the English case *Henderson v. Henderson*,¹⁸¹ which is fully adopted by the Cyprus courts:

‘...the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence or even accident omitted part of their case. The plea of *res judicata* applies, except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time.’¹⁸²

¹⁷⁸ K.R. Handley, 2009, p. 107.

¹⁷⁹ *R v. Hartington Middle Quarter Inhabitants* (1855) 4 E&B 780.

¹⁸⁰ *Acuac Inc. v Frederickou Schools Co. Limited and Michael Frederickou* (2014) 8809/03 and 4036/08, ECLI:CY:EDLEF:2014:A133.

¹⁸¹ *Henderson v. Henderson* (1843-1860) All E.R.(Rep.) 378.

¹⁸² *Ibid*, page 381.

As it was underlined by the Supreme Court in the case *Regarding the Application of Refaat Barquwi*,¹⁸³ again with reference to *Henderson v. Henderson*, 'In this way, justice is protected from perpetual proceedings in which the invention of the party would play a leading role.'

There is reference to further English case law, which applied the same principle, such as in the case of *Greenhalgh v. Mallard*,¹⁸⁴ where it was stated that:

'I think that on the authorities to which I will refer it would be accurate to say that *res judicata* for this purpose is not confined to the issues which the Court is actually asked to decide but that it covers issues or facts which are so clearly part of the subject matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the Court to allow a new proceeding to be started in respect of them.'¹⁸⁵

Also, the case *Barrow v. Bankside Agency Ltd*,¹⁸⁶ is frequently quoted by Cyprus judges:

'In the absence of special circumstances, the parties cannot return to the court to advance arguments, claims or defences which they could have put forward for decision on the first occasion but failed to raise. The rule is not based on the doctrine of *res judicata* in a narrow sense, nor even on any strict doctrine of issue or cause of action estoppel. It is a rule of public policy based on the desirability, in the general interest as well as that of the parties themselves, that litigation should not drag on for ever and that a defendant should not be oppressed by successive suits when one would do. That is the abuse at which the rule is directed.'¹⁸⁷

Similar reference was made in *Spencer-Bower and Turner: Res Judicata*:

'Whenever it is shown that the party against whom a judicial decision is ultimately pronounced omitted to raise by pleading, argument, evidence or otherwise some question, or issue, or point which he could have raised in his favour by way of defence or support to his case without detriment to his position or interests in the

¹⁸³ *Regarding the Application of Refaat Barquwi* (2004) 1 CLR 1.

¹⁸⁴ *Greenhalgh v. Mallard* (1947) 2 All E.R.255.

¹⁸⁵ *Ibid*, page 257.

¹⁸⁶ *Barrow v. Bankside Agency Ltd* (1996) 1 W.L.R.257.

¹⁸⁷ *Ibid*, page 260.

pending, or in future proceedings and which, therefore, it was his duty (in a sense) to have them raised, the adverse general decision though it contains no express declaration to that effect, is deemed to carry with it a particular adverse decision on the question, issue or point so omitted to be raised, just as much as if it had been expressly raised by the party and expressly determined against him. And this is so whether the question or issue is simply passed over through inadvertence, or is made the subject of express or implied assumption or admission.¹⁸⁸

In the Cyprus Supreme Court case *Pamporides v Kitkatikis Trapezis Kiprou Ltd*¹⁸⁹ Judge Constantinides reiterated that *res judicata* is not only applied in relation to those claims which were included in the first action but also in relation to those that could have been raised as part of the original claim of the dispute but were not raised. It is well founded that this extension applies to both aspects of *res judicata*, i.e., for an obstacle regarding the cause of the action and for an obstacle regarding a disputed subject.

In *Argousta K. Theori and another v Maroulla A. Djoni and another*,¹⁹⁰ the Supreme Court underlined that the party registering the second action has a duty to include all disputes in the first action in order to avoid multiple proceedings ('it was in our view, their duty to include it in such action so as to avoid multiplicity of proceedings').

The Court's approach in the case *Sofias Kleopa v Christoforou Antoniou*,¹⁹¹ is absolutely relevant to the issue under consideration in the present case. The claimant initially brought a claim for damages in connection with the damages suffered by her vehicle in a car accident. After a decision was issued in her favour for 1.900 Cyprus Pounds, she brought a new claim against the same defendant, seeking compensation for bodily harm she had suffered. The Supreme Court, based on a number of previous judgments, ruled that the initiation of the new action, on the same grounds and on the same basis as the previous one, was in conflict with the doctrine of *res judicata*.

¹⁸⁸ G. Spencer Bower and A. Kingcome Turner, 2009.

¹⁸⁹ *Pamporides v Kitkatikis Trapezis Kiprou Ltd* (1995) 1 CLR 670.

¹⁹⁰ *Argousta K. Theori and another v Maroulla A. Djoni* (1984) 1 CLR 296.

¹⁹¹ *Sofias Kleopa v Christoforou Antoniou* (2002) 1 CLR 58.

In the case *Minister of Interior as guardian of Turkish-Cypriot properties v Theodosi Mylona*,¹⁹² the Supreme Court Judge Kramvis comments with regards to res judicata: ‘The concept of estoppel due to the cause of action known as the cause of action estoppel, is rendered in a simple and descriptive way by Lord Denning M.R. in *Fidelitas Shipping Co Ltd V V/O Exportchleb*¹⁹³ as follows:

‘If one party brings an action against another for a particular cause and judgment is given on it, there is a strict rule of law that he cannot bring another action against the same party for the same cause.’

Another type of estoppel which belongs in the general notion of estoppel by record or estoppel per rem judicata is issue estoppel, which concerns the issues at stake and was described by Diplock L.J. in *Mills Cooper*.¹⁹⁴

‘A party to civil proceedings is not entitled to make, as against the other party, an assertion, whether of fact or of the legal consequences of facts, the correctness of which is an essential element in his cause of action or defence, if the same assertion was an essential element in his previous cause of action or defence in previous civil proceedings between the same parties or their predecessors in title, and was found by a court of competent jurisdiction in such previous civil proceedings to be incorrect, unless further material which is relevant to the correctness or incorrectness of the assertion by that party in the previous proceedings has since become available to him.’

Cypriot judges follow explicitly the *Halsbury's Laws of England*.¹⁹⁵

‘In all cases where the cause of action is really the same and has been determined on the merits and not on same ground (such as the non-expiration of the term of credit) which has ceased to operate when the second action is brought the plea of res judicata should succeed. The doctrine applies to all matters which existed at the time of the giving of the judgment and which the party had an opportunity of bringing before the Court. If, however, there is matter subsequent which could not

¹⁹² *Minister of Interior as guardian of Turkish-Cypriot properties v Theodosi Mylona* (2002) 1 CLR 120.

¹⁹³ *Fidelitas Shipping Co Ltd V V/O Exportchleb* (1965) 2 All E.R. 4.

¹⁹⁴ *Mills Cooper* (1967) 2 Q.B. 459.

¹⁹⁵ Halsbury's Laws of England, Vol. 16, 2006, para. 1529.

be brought before the Court at the time, the party is not estopped from raising it.’ ‘A party cannot in a subsequent proceeding raise a ground of claim or defence which upon the pleadings or the form of the issue was open to him in the former one.’

The same approach was followed in *Papamichael v Pamporis Constructors Ltd.*¹⁹⁶

The negative declaratory relief is *res judicata* itself, which means that parties cannot bring new claims asking for negative declaratory relief. However, the dismissal of a negative declaratory action is not an immediate equivalent of a declaration of the opposite, so the judgment does not become enforceable for the creditor. For example, when party A initiates an action against B for a declaration that he does not have to pay B an amount of money, and the court dismisses the claim, this does not mean that A has to pay B the amount of money. B should start new proceedings asking for A to pay him the money, but in this case, the court will not have to examine again whether A owns money to B or not, as this was *res judicata* from the previous decision. The court in the second proceedings will only examine, for example, the exact amount of money, the method of payment etc.

The matter of interim judgments on the well-foundedness of a claim in relation to *res judicata* effects has been extensively analysed in the case of *Nicolaide and Medansyl Limited v Mediterranean Hospital of Cyprus and others.*¹⁹⁷ The issuance and finalisation of interim judgments create a *res judicata* as it is considered that: The action reveals a right to claim and this has already been examined and decided by the Court in the context of the issuance of interim judgment, while the claimants themselves did not object to the finalisation of the interim judgments as a result they become absolute. The application for the issuance of interim judgments presupposes the satisfaction of the first condition of Article 32 of the Courts Law (Law 14/1960) concerning the existence of a serious issue for adjudication. As interpreted by case law, the first condition of Article 32 presupposes the existence of a disputed case on the basis of the claim reports, while the second presupposes the probability that the claimant is entitled to the remedies he claims in the action.¹⁹⁸

¹⁹⁶ *Papamichael v Pamporis Constructors Ltd* (2009) 1 CLR 563.

¹⁹⁷ *Nicolaide and Medansyl Limited v Mediterranean Hospital of Cyprus (MHOC) and others*, Case No. 1257/2015, 23/7/2019, ECLI:CY:EDLEM:2019:A413.

¹⁹⁸ *Hellenic Bank Public Company Limited v. Alpha Panareti Public Ltd*, (2013) 1 (B) CLR at 1235.

With regard to the requirement for dismissal of the claim as an undisclosed right to claim, the applicable criterion is whether there is a reasonable cause for action. As stated by the Supreme Court in the case of *Republic of Cyprus v Argyri Georgiou*,¹⁹⁹ the main question that arises is whether, on the basis of the case reports, an alleged basis for action is revealed.

In Cyprus, a foreign judgment must be final and conclusive. In addition, the judgment against the defendant must be given by a court of competent jurisdiction (to be determined under Cypriot conflict of law rules). The judgment shall not be obtained by fraud. Thus, once a judgment is given in another Member State, is treated as *res judicata* and the same claim cannot be brought again before a court in Cyprus. To some extent, this issue was discussed by the court in the case *Agne Th. Thrasyvoulou v Ninos Florides*.²⁰⁰

As aforementioned, the *res judicata* applied to the rule of law that directly supports the decisions and is inextricably linked to the outcome, but not to the part of the reasoning, the development of which is not objectively necessary for the decision.²⁰¹ Thus part of the reasoning which establishes the rule of law on which the decision was relied will be binding upon the parties, while the rest of the reasoning will not have binding effects.

6.2 Effects of judgments – *res judicata* and enforceability

Order 34 of Civil Procedure Rules regulates the entry of a judgment. Unless the Court has directed that a judgment be not drawn up until a certain date or until a certain event has happened, every judgment shall, on the application of any party to the Registrar, be entered in a book to be kept for the purpose. Every judgment when entered shall be dated as of the day on which it was pronounced, and shall, save where it otherwise directs, take effect from that date, and a note shall be made in the book in which it is entered of the date of entry. In other words, a judgment becomes *res judicata* at the day on which it was pronounced, thus the doctrine has immediate effect in Cyprus. Where any judgment is given subject to the filing of any affidavit or production of any document, the Registrar shall examine the affidavit or

¹⁹⁹ *Republic of Cyprus v Argyri Georgiou* (2003) 1(B) CLR 704.

²⁰⁰ *Agne Th. Thrasyvoulou v Ninos Florides*, Case No. 7882/2009, 29/1/2015, ECLI:CY:EDLEF:2015:A31.

²⁰¹ *Mavrogenis v House of Representatives and others* (1996) 1 CLR 315.

document produced, and if the same shall be regular and contain all that is by law required, the judgment shall be entered accordingly.

As per Order 35 of Civil Procedure Rules, an appeal shall not operate as a stay of execution or of proceedings under the decision appealed from except so far as the Court appealed from or the Court of Appeal, or a Judge of either Court, may order; and no intermediate act or proceeding shall be invalidated, except so far as the Court appealed from may direct.

In case there is a request for staying execution because of a pending appeal, pursuant to Order 35 of Civil Procedure Rules, it is provided that before any order staying execution is entered, the person obtaining the order shall furnish such security (if any) as may have been directed. If the security is to be given by means of a bond, the bond shall be made to the party in whose favour the decision under appeal was given.

Every person to whom any sum or money or any costs shall be payable under a judgment or order shall, as soon as the money or costs shall be payable, be entitled to apply for the issue of writs to enforce payment thereof, subject nevertheless as follows:-

(a) If the judgment or order is for payment within a period therein mentioned, no writ shall be issued until after the expiration of such period; (b) The Court or Judge may, at or after the time of giving judgment or making an order, stay execution until such time as they or he shall think fit.

When ten years have elapsed since issuing of the judgment or order, or when any change has been made to the parties who are entitled or subject to enforcement, the party claiming to be entitled to enforcement may apply to the Court for permission to perform accordingly. And the Court or the Judge, if satisfied that the party to the application is entitled to do so, may issue a decree to that effect, or may order, as in any other matter necessary, the rights of the parties.

In Cyprus, when a judgment requires execution, the sheriff is involved. Every writ of execution for the recovery of money shall direct the deputy sheriff to levy the money really due and payable and sought to be recovered under the judgment or order, stating the amount and the costs of the execution. And the writ shall also direct in what manner the money levied in execution is to be disposed of by the deputy sheriff.

If either the deputy sheriff executing a writ or any person interested in or affected by the execution thereof wishes to have the Court's directions in any matter relating to it, he may apply to the Court out of which the writ was issued or to a Judge thereof, for directions to the deputy sheriff; and the Court or Judge may, either *ex parte* or upon notice given to such person as the Court or Judge may think fit, give such directions as may be just. Directions given to the deputy sheriff on his own application need not be entered as an order. In other cases, any person interested in or affected thereby may require the directions to be entered as an order and deliver an official copy of the order to the deputy sheriff for compliance therewith, or may appeal therefrom if dissatisfied.

Where any judgment or order is sought to be executed out of the District of the Court by which such judgment or order is given, the writ shall be prepared by a Registrar of such Court in the same manner as any writ of execution to be executed within the District of the Court is prepared, save that it shall be addressed to the Sheriff of the District within which the writ is to be executed. Such writ shall be delivered by a Registrar to the party applying for the same, and shall be presented by him to the Registrar of the Court within the District of which it is to be executed. On presentation thereof by him the same shall be signed by one of the Judges of such last-mentioned Court, and shall then be passed to the Sheriff for execution.²⁰²

6.3 Personal Boundaries of Res Judicata

Civil Procedure Law, Cap 6, has specific provisions regarding third persons who are affected by a judgment. Article 73 refers to seizure orders of movables and debts in the hands of a third person. When the judgment debtor is beneficially interested in any amount of money, insurance for an amount of money, goods or other movable

²⁰² Civil Procedure Rules, Order 40, Rule 16.

property under custody or control by a third person in the Republic of Cyprus or when that third person is a debtor of the judgment debtor, then the court can, at the request of the judgment creditor at any time after the judgment is released, issue a seizure order against the third person. With this seizure order, the third person should appear before the Court so as to be examined regarding the property he/she owns as mentioned in the order, and by which the third person is ordered not to resign in the meantime from its custody. The warrant is binding on the property of the judgment debtor which is in the possession of the third party for the execution of the judgment debt.

Article 78 provides for the disposal of confiscated property. In particular, it provides that once the court hears the persons it may consider to be interested or after notifying them, it may order that any part of the property seized into the hands of a third party, which consists of money or a sufficient portion thereof, to be paid to the judgment creditor. According to the same articles. the third person may be ordered to proceed with sale of property, with the money from the sale or sufficient part of it to be allocated for the satisfaction of the judgment.

Moreover, Article 79 is entitled ‘Execution against a third party’ and provides that in case a third person who has been given a seizure order fails to comply with it, the court may order enforcement against him for the amount of property seized from him, or for such part of it as it would be sufficient to satisfy the judgment.

Judgments producing in rem binding effects are allowed in Cyprus legal order and are regulated by Articles 22 and 23 of Civil Procedure Law, Cap 6. No execution order for the sale of immovable property will be issued except with the consent of the judgment debtor, unless a previous execution order for the sale of the movable property of the judgment debtor, has been returned to the Court unenforced or unless it appears that the judgment debtor does not in fact hold the movable property. In order for immovable property to be included in a judgment against the judgment debtor, it must be registered to his/her name according to the Land Registry.

Order 12 of the Civil Procedure Rules provides for the death of a party during the proceedings. A cause or matter shall not become abated by reason of the death of any of the parties, if the cause of action survive or continue, and shall not become defective by the assignment, creation, or devolution of any estate or title *pendente lite*; and, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the termination of the hearing and judgment, but judgment may in such case be given notwithstanding the death. In case of the death of any party to a cause or matter, the Court or a Judge may, if it be deemed necessary for the complete settlement of all the questions involved, order that the personal representative, trustee or other successor in interest (if any) of such party be made a party, or be served with notice in such manner and form as hereinafter prescribed, and on such terms as the Court or Judge shall think just, and shall make such order for the disposal of the cause or matter as may be just. In case of an assignment, creation, or devolution of any estate or title *pendente lite*, the cause or matter may be continued by or against the person to or upon whom such estate or title has come or devolved. Where by reason of death, it becomes necessary or desirable that any person not already a party should be made a party, or that any person already a party should be made a party in another capacity, an order that the proceedings shall be carried on between the continuing parties, and such new party or parties, may be obtained *ex parte* on application to the Court or a Judge, upon an allegation of such change, or transmission of interest or liability, or of any such person interested having come into existence.

When the claimant or defendant in a cause or matter dies and the cause of action survives, but the person entitled to proceed fails to proceed, the defendant (or the person against whom the cause or matter may be continued) may apply to compel the claimant (or the person entitled to proceed) to proceed within such time as may be ordered: and, in default of such proceeding, judgment may be entered for the defendant, or, as the case may be, for the person against whom the cause or matter might have been continued; and in such case, if the claimant has died, execution may issue.

6.4 Temporal dimension of judgments

Once a judgment is given it is final and *res judicata*, and its validity cannot be affected by any changes to statute or case-law.

The Civil Procedure Law, Cap 6, provides specifically for the instance that the judgment requires the debtor to pay periodic instalments and it may be necessary to amend the payable amount. Article 90 provides that a court order for the payment of periodic instalments may be cancelled, suspended or amended at the request of the debtor if he/she proves that his/her financial situation has changed substantially from the date of the last examination conducted by the court, so that he/she is unable to pay the instalments on time and in the amounts determined by the court in its order or if the court, taking into account all the evidence which the debtor will bring before him, consider it appropriate or even lenient to annul, suspend or amend the order. A court order for the payment of periodic instalments can also be amended at the request of the judgment creditor if he/she proves that the debtor's financial situation had changed for the better since the date of issuance of the decree or its last differentiation or that during its examination before the Court, the debtor, by decision, concealed or did not disclose the existence of substantial facts or conditions determining his financial situation, which if known to the Court, the content of the decree would be substantially different from that already issued.

6.5 Set-off

Set-off is only allowed on the merits of a dispute in cases of assignment of debt. In civil and commercial disputes, the two parties can invoke set-off in terms of the costs and damages. As Order 59 of Civil Procedure Rules provides, 'a set-off for damages or costs between parties may be allowed'. Also, according to Rule 13 of the same Order, 'in any case in which... a party entitled to receive costs is liable to pay costs to any other party, the taxing officer may tax the costs such party is so liable to pay, and may adjust the same by way of deduction or set-off, or may, if he shall think fit, delay the allowance of the costs such party is entitled to receive until he has paid or tendered the costs he is liable to pay; or such officer may allow or certify the costs to be paid, and the same may be recovered by the party entitled thereto in the same manner as costs ordered to be paid may be recovered'.

The concept of set-off was discussed by the court in the case of *Fadi George Awad v Marion Varnava and Panikou Grouta*,²⁰³ where the Judge referred to a quote from ‘Annual Practice’ of 1958, with which he agreed and supported that is applicable in the national legal order: ‘costs payable under different orders in the same suit, and notwithstanding change of solicitors... or in two suits in which the same estate is being administered... may be set off against each other; but the costs of two independent proceedings in different Courts cannot be set off against each other’.²⁰⁴

Also, the cases *Heatron Co Ltd v Nicolaou*²⁰⁵ and *Nicolaos Antoniou v The Cyprus Popular Bank Ltd*,²⁰⁶ established that the set-off of amounts arising from mutual but independent liabilities of the parties is not possible under Cypriot law.

²⁰³ *Fadi George Awad v Marion Varnava and Panikou Grouta*, Case no. 375/09, 26/7/2017, ECLI:CY:EDLEF:2017:A202.

²⁰⁴ R. F. Burnard, 1957, 1899.

²⁰⁵ *Heatron Co Ltd v Nicolaou* (1999) 1(A) CLR 582.

²⁰⁶ *Nicolaos Antoniou v The Cyprus Popular Bank Ltd* (1994) 1 CLR 720.

7 Lis pendens and related actions in another member state and irreconcilability as a ground for refusal of recognition and enforcement

The concept of lis pendens has been well discussed by Cyprus courts in numerous cases. One of the oldest cases in which a Cyprus court sought to consider the lis pendens mechanism was the case of *Reederei Schulte and Bruns Baltic, Schiffahrts K.G. v Ismini Shipping Company Ltd*.²⁰⁷ A thorough analysis of lis pendens was developed in the case of *EMD Trust Ltd v Sharma*.²⁰⁸ The Court in *Rodette Commerce Ltd and others v Amberst Capital Investments Ltd and others*²⁰⁹ also followed the same reasoning and shared the same authorities and reasoning.

²⁰⁷ *Reederei Schulte and Bruns Baltic, Schiffahrts K.G. v Ismini Shipping Company Ltd* (1975) CLR 433.

²⁰⁸ *EMD Trust Ltd v Sharma*, Case No. 68/2017, 31/10/2018, ECLI:CY:EDLAR:2018:A176.

²⁰⁹ *Rodette Commerce Ltd and others v Amberst Capital Investments Ltd and others* (2010) 1067/07.

Lis pendens is determined by national courts by confirming that the two actions are between the same parties and involve the same cause of action and the same subject-matter. No further conditions or rules have been imposed in Cyprus law.

After referring to the wording of Article 29 B IA, the courts share a similar approach when they seek to examine a request for stay of proceedings on the lis pendens ground, which heavily relies on the CJEU case law on this matter. The *Gantner* case²¹⁰ is usually used, by commenting on the automatic character of lis pendens, as this was explained by the CJEU: ‘Finally, the objective and automatic character of the lis pendens mechanism should be stressed. As the United Kingdom Government correctly points out, Article 21 of the Convention adopts a simple method to determine, at the outset of proceedings, which of the courts seised will ultimately hear and determine the dispute. The court second seised is required, of its own motion, to stay its proceedings until the jurisdiction of the court first seised is established. Once that has been established, it must decline jurisdiction in favour of the court first seised....’²¹¹ Another principle from the same case that was used by Cypriot courts is that ‘in order to determine whether there is lis pendens in relation to two disputes, account cannot be taken of the defence submissions, whatever their nature, and in particular of defence submissions alleging set-off, on which a defendant might subsequently rely when the court is definitively seised in accordance with its national law’.²¹²

The principle established by the House of Lords in *Sarrio S.A. v Kuwait Investment Authority*²¹³ that the claims are relevant if common issues are likely to arise on the basis of a broad and common-sense approach to the risk of issuing conflicting decisions, is also regularly used by Cyprus courts.

²¹⁰ C-111/01, *Gantner Electronic GmbH v Basch Exploitatie Maatschappij BV*, ECLI:EU:C:2003:257.

²¹¹ *Ibid*, paragraph 30.

²¹² *Ibid*, paragraph 31.

²¹³ *Sarrio S.A. v Kuwait Investment Authority* [1999] AC 32.

7.1 Cause of Action

For domestic cases, the term ‘cause of action’ is defined in Article 2 of Law 14/60 as follows: ‘A "cause of action" includes the total of facts that found the right to bring a claim, but in contractual claims this does not necessarily mean the whole cause of action.’ The cause of action in each case is determined based on the case file.²¹⁴ Thus, the cause of action is decided based on the facts of the case that constitute the claim and are included in the claims report.²¹⁵ Also, a claim may have more than one causes of action. In the case *Radiofoniko Idrima Kiprou and others v Androu Nikolaidi*,²¹⁶ it was underlined that Order 13 of the Civil Procedure Rules allows several causes of action in the same action and ‘where two or more causes of action are united in the same legal action, the substance of action is the sum of the causes of the action’.

The courts of Cyprus approach the concept of a ‘cause of action’ by adopting the EU law approach on this. Thus, for example, in the *EMD Trust Ltd v Sharma*, the court relied on the definition given by the CJEU in *Gubisch* case²¹⁷ and in the *Tatry* case,²¹⁸ namely that ‘the "cause of action" comprises the facts and the rule of law relied on as the basis of the action... The "object of the action" for the purpose of article 21 means the end the action has in view’.²¹⁹ Of course, the courts of Cyprus anticipate that the phrase ‘same cause of action’ has an independent and autonomous meaning at the EU level for the purposes of the Regulation. Cyprus courts are also adopting the approach of the CJEU in the *Gantner* case²²⁰ that the cause of action is ‘the end the action has in view’. As can be seen from the above, what is essential is basically how one claim affects or could influence the other, resulting in the possibility of conflicting judgments that cannot be enforced in the other country.

²¹⁴ *Safarino Shoes Industry & Trading Co Ltd v. Shoe Industry E Stavrinou Ltd* (1991) 1 CLR 1059, 1063, *Georgios Papageorgiou v Loui Clappa (Investments Services Ltd)* (1991) 1 CLR 24, *Homeros Th. Courtis and others v. Panos K. Iasonides* (1970) 1 CLR 180 and *Christakis Loucaides v. C. D. Hay and Sons Ltd* (1971) 1 CLR 134.

²¹⁵ *Sartas Importers-Distributors Ltd v. Maroulli* (2003) 1(C) CLR 1446, and *Mourtzinos v. Global Cruises Ltd* (1992) 1(F) CLR 1160, *Sevegep Ltd v. United Sea Transport* (1989) 1(E) CLR 729.

²¹⁶ *Radiofoniko Idrima Kiprou and others v Androu Nikolaidi* (1993) 1 CLR 364.

²¹⁷ C-144/86, *Gubisch Maschinenfabrik v Palumbo*, ECLI:EU:C:1987:528.

²¹⁸ C-406/92, *Tatry v Maciej Rataj*, ECLI:EU:C:1994:400.

²¹⁹ *Ibid*, paragraph 3.

²²⁰ C-111/01, *Gantner Electronic GmbH v Basch Exploitatie Maatschappij BV*, ECLI:EU:C:2003:257.

According to Order 2 Rule 3 of the Civil Procedure Rules, every writ of summons should include ‘a statement of the nature of the claim made, or of the relief or remedy required in the action, but it shall not be essential to set forth in such indorsement the precise ground of complaint, or the precise remedy or relief to which the plaintiff considers himself entitled’. Unless the identity of parties is contained in the writ of summons, the Court does not seal it. This is how the cause of action is identified.

As per Order 27, Rule 4 of Civil Procedure Rules, no action or proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether any consequential relief is or could be claimed, or not.

As per Order 2 Rule 3 of the Civil Procedure Rules, every writ of summons should include ‘the name in full of the plaintiff and the defendant, the address in full and occupation of the plaintiff and, so far that they can be ascertained, of the defendant, and the plaintiff’s address for service within the municipal limits of the town or village in which is situated the registry in which the writ is being filed.’ Unless the identity of parties is contained in the writ of summons, the Court does not seal it.

For the *lis pendens* mechanism to be applicable, there is a requirement for the parties in each of the actions to be the same. Where there are more than two parties, issues can arise as to whether the same parties are involved. The court in *Kolden Holdings v Rodette Commerce* applied a flexible approach in determining whether both sets of proceedings involved the same parties and considered previous authorities to determine the principles the courts should apply.²²¹ It was underlined that the term ‘same parties’ has an independent or autonomous meaning, as established in the *Tatry* case.²²² Whether the parties are the same cannot depend on the procedural position of each of them in the two actions, so whether they act as the claimant or the defendant in each set of proceedings is irrelevant.

²²¹ *Rodette Commerce Ltd and others v Amberst Capital Investments Ltd and others*, Case No. 1067/07, 16/4/2010, ECLI:CY:EDLEF:2010:A147.

²²² C-406/92, *Tatry v Maciej Rataj*, ECLI:EU:C:1994:400.

What is important is that the parties must be identical. Two parties will be the same where their interests are identical and indissociable in relation to the subject matter of the two disputes concerned. In terms of legal entities, whether they are identical may depend on whether 'there is such a degree of identity between the interests of the entities that a judgment given against one of them would have the force of *res judicata* as against the other'.²²³

For the purposes of *lis pendens* rule, the 'cause of action' comprises the facts and the rule of law relied on as the basis of the action and the 'object of the action' means the end the action has in view. An action seeking to have the defendant held liable for causing loss and ordered to pay damages has the same cause of action and the same object as earlier proceedings brought by that defendant seeking a declaration that he is not liable for that loss. The cause of action refers to the juridical basis of the claim in this case. Identity of object means that the proceedings in each jurisdiction must have the same end in view. In other words, the object of an action is its legal purpose which is defined by reference to the intended legal outcome. The strategic intentions or underlying motives of the parties are of no relevance. The assessment of identity of cause and identity of object is to be made by reference only to the claims in each action and not to the defences to those claims.

7.2 Treatment of *Lis pendens* under the Brussels IA regulation

Related actions are treated according to the definition given by the B IA ('actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings') as referred to by the CJEU in the *Tatry* case.²²⁴ Namely, the court in *EMD Trust Ltd v Sharma* was asked to examine whether the dispute at stake was a 'related action' with a dispute being litigated in England.²²⁵ Generally, the Cyprus courts are treating the notion of 'related actions' broadly in order to ensure that irreconcilable judgments will not be issued.

²²³ C-351/96, *Drouot assurances v Consolidated metallurgical industries and Others*, ECLI:EU:C:1998:242, paragraph 19.

²²⁴ C-406/92, *Tatry v Maciej Rataj*, ECLI:EU:C:1994:400.

²²⁵ *EMD Trust Ltd v Sharma*, Case No. 68/2017, 31/10/2018, ECLI:CY:EDLAR:2018:A176.

As per the approach of Cyprus legal order, related actions can even be considered proceedings between different parties if their disputed issue arises from the same events and there is a possibility that separate judgments will be issued on the same events with conflicting results. That is, even if there are no legal effects of one procedure on the other.

There are various cross-border cases involving related actions in the context of B IA that have been dealt with by Cyprus courts. For example, in the *Tanberg Investments Ltd and ADEAL IMPORT LLC v UCF INVEST Ltd and UCF PARTNERS Ltd*,²²⁶ in *Saven Enterprises Ltd v. OAO Tomusinsky Open Pit Mine and others*,²²⁷ and in *GORSOAN LIMITED and others v. JANNA BULLOCK and others*,²²⁸ the Cyprus courts stayed their proceedings in favour of foreign proceedings on related actions. On the contrary in the case of *Mourtziinos v. The ship 'Galaxias' and others*,²²⁹ and in *Rodette Commerce Ltd and others v Amberst Capital Investments Ltd and others*,²³⁰ the Court was not satisfied that the parallel litigation was indeed a related action, within the meaning of B IA, thus it rejected the argument of the defendants.

No specific definition was given for irreconcilability by Cyprus courts other than acknowledging that irreconcilable judgments are those giving rise to mutually exclusive legal consequences. Courts in Cyprus have emphasised the importance of avoiding irreconcilable judgments, by sharing a quote from The Brussels I Regulation Recast:

‘Parallel proceedings pose a serious threat to the integrity of the operation of the Brussels regime by creating the potential for irreconcilable judgments in different Member States... Irreconcilable judgments also challenge the central principle of mutual trust of each Member State in each other and the overarching duty to do justice between the parties encapsulated in the finality principle... Finally, irreconcilable judgments call into question the objective of uniformity of

²²⁶ *Tanberg Investments Ltd and ADEAL IMPORT LLC v UCF INVEST Ltd and UCF PARTNERS Ltd*, Case No. 2263/2018, 19/2/2019, ECLI:CY:EDLEM:2019:A89.

²²⁷ *Saven Enterprises Ltd v. OAO Tomusinsky Open Pit Mine and others*, Case No. 2680/2014, 30/4/2015, ECLI:CY:EDLEF:2015:A175.

²²⁸ *GORSOAN LIMITED and others v. JANNA BULLOCK and others*, Case No. 3573/2012, 05/11/2013, ECLI:CY:EDLEM:2013:A340.

²²⁹ *Mourtziinos v. The ship 'Galaxias' and others* (1997) 1 CLR 80.

²³⁰ *Rodette Commerce Ltd and others v Amberst Capital Investments Ltd and others*, Case No. 1067/07, 16/4/2010, ECLI:CY:EDLEF:2010:A147.

decisions. The Regulation exceptionally makes provision for one Member State to refuse to recognize or enforce a judgment from another Member State on the basis of its irreconcilability with a judgment given by the courts of the Member State addressed or another Member State.²³¹

²³¹ A. Dickson and E. Lein, 2015, paragraph 11.02.

8 Court settlements

There are two ways by which a court settlement may be concluded:

- 1) The parties (and/or their representatives) appear before the court and 'declare' the settlement. The conclusion of a settlement agreement and its terms are recorded by the court and become a Rule of Court. The Rule of Court is a contract (not a judgment) which is subject to the provisions of Contract Law (CAP 149).²³²
- 2) There can be a judgment by consent where one or more of the defendants(s) accept a judgment against them.²³³ Such acceptance is a judgment and can be enforced as such.

A Rule of Court declared in court must incorporate the terms of the agreement reached between the parties. As a simple contract it must be interpreted as such. Its construction 'must be as near to the minds and apparent intention of the parties as is possible and as the law permits.'²³⁴ According to the Supreme Court, the cardinal presumption is that 'the parties have intended what they have in fact said. So their words must be construed as they stand'.²³⁵

²³² *Georgiades v Georgiades* (1988) 1 CLR 428, 433.

²³³ *Alpha Bank Cyprus Ltd v Tambako Holdings Ltd and others*, Case No. 191/11, 9/1/2018, ECLI:CY:EDLAR:2018:A2.

²³⁴ *Georgiades v Georgiades* (1988) 1 CLR 428, 434.

²³⁵ *Ibid.*

Where a party accepts a judgment by consent, this is done with reference to the relief sought by the claimant in the claim. For example, a defendant can accept a judgment with respect to an amount of money claimed by the party bringing the action.²³⁶ Alternatively, a defendant can accept a judgment against them for a part of the claim (while court proceedings continue for the remainder of the claim).²³⁷

The parties (and/or their representatives) must appear before the court and ‘declare’ the settlement reached between them. The conclusion of the settlement agreement and its terms are recorded by the court and become a Rule of Court. The Rule of Court is a simple contract; it is not transformed into a judgment. Thus, it is subject to the provisions of Contract Law (CAP 149).²³⁸ Alternatively, a valid court settlement requires that one or more of the defendants(s) (and/or their representatives) appear before the court and accept a judgment against them.²³⁹ Such acceptance constitutes a judgment which becomes binding as soon as it is issued (unless there is an order to the contrary in the judgment itself).²⁴⁰

The parties in a settlement are identified in the same manner as in all other cases (see section 3.3 above). They are identified based on the information contained in the title of the action,²⁴¹ which, ultimately, becomes part of the title of the judgment upon entry of judgment.²⁴²

The (substantive) legal relationships that can be settled in a court settlement are inextricably linked with the claims of the parties (and counterclaims where relevant) in the case before the court. To this effect, the settlement can resolve issues ranging from contractual relationships,²⁴³ proprietary rights,²⁴⁴ defamation proceedings²⁴⁵ etc.

²³⁶ *Evrripides Neocleous v Liberty Life Insurance Ltd*, Case No. 7282/05, 12/12/2008, ECLI:CY:EDLEF:2008:A251.

²³⁷ *Astroland Limited v Grigoriou*, Case No. 5523/2014, 31/05/2016, ECLI:CY:EDLEF:2016:A334.

²³⁸ *Apaisiotti and another v Rayia and another* (1993) 1 CLR 882, 883.

²³⁹ *Alpha Bank Cyprus Ltd v Tambako Holdings Ltd and others*, Case No. 191/11, 9/1/2018, ECLI:CY:EDLAR:2018:A2.

²⁴⁰ Courts of Justice Law of 1960 (14/1960), section 47.

²⁴¹ Civil Procedure Rules, Order 63 Rule 1.

²⁴² *Ibid*, Order 34 Rule 3.

²⁴³ *Evrripides Neocleous v Liberty Life Insurance Ltd*, Case No. 7282/05, 12/12/2008, ECLI:CY:EDLEF:2008:A251.

²⁴⁴ *Apaisiotti and another v Rayia and another* (1993) 1 CLR 882, 883.

²⁴⁵ *«Phileletheros Ltd» Company and another v Sofocleous* (2003) 1(A) CLR 549.

A Rule of Court becomes enforceable as soon as the settlement is declared in court and the court issues a 'consent judgment'. Where one or more of the defendants accept a judgment against them by consent (on the basis of the claim or part thereof), and the judgment is issued, the judgment is immediately enforceable unless otherwise provided.²⁴⁶

According to the Supreme Court, a judgment issued after a hearing or a settlement agreement acts in the same manner and has the same consequences. The party consenting to the issuance of a court judgment or order recognises the validity of the action and the justification of the relief sought. Hence, in both cases a court judgment issued after a hearing or pursuant to a settlement agreement, creates a *res judicata* which extinguishes the right to sue, and which thereafter binds the rights and obligations of the parties based to the judgment rendered. In effect, the actionable right is extinguished because it is absorbed by the judgment.²⁴⁷

It is the firm position of the Supreme Court, in a long line of authorities, that it is not possible to amend the legal relationship once settled (except for correcting accidental errors or omission under Order 25 Rule 6 of the Civil Procedure Rules):

'Therefore, once, in Cyprus, a judgment has been delivered, signed and filed, there can be no possibility for the Court which has delivered it to rehear argument and to change it, or set it aside, except, of course, to the extent to which it has, always, been possible to correct an error in a judgment under the provisions of Order 25, rule 6 (which is known as the 'slip' rule and corresponds to Order 20 rule 11 of the Rules of the Supreme Court in England), and under the inherent jurisdiction of the Court.'²⁴⁸

As discussed in section 4.7 above, Order 25 Rule 6 of the Civil Procedure Rules, gives the power to the court to correct clerical mistakes in the pleadings, judgments or orders which arise from an accidental slip or omission, depending on the nature and extent of the mistake. This power also extends to the rectification of errors in a court settlement; the primary consideration remains identifying and giving effect to

²⁴⁶ *Astroland Limited v Grigoriou*, Case No. 5523/2014, 31/05/2016, ECLI:CY:EDLEF:2016:A334. See: Civil Procedure Rules, Order 40 Rule 7.

²⁴⁷ *«Phileftheros Ltd» Company and another v Sofocleous* (2003) 1(A) CLR 549.

²⁴⁸ *Orphanides v. Michaelides* (1968) 1 CLR 295, 303. More recently confirmed in: *Markides v Emiliou Eliadi Ltd* (2000) 1B CLR 729.

the ‘objectively undisputed intention’ of the court.²⁴⁹ In doing so, the court will consider among others the statements of the counsels and the text of the settlement agreement.

²⁴⁹ *Lanitis Bros Public Ltd v Pavlou* (2011) 1 CLR 532.

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Between 2017-2021, Despina was a lecturer in International Commercial Arbitration and Investment Law at the University of Central Lancashire, Cyprus. She is also a qualified non-practising lawyer, and qualified commercial mediator. She wrote her PhD at UCLan Cyprus in a topic related to the JMM (arbitration and financial crisis in the EU legal order) under the supervision of Prof. Laulhé Shaelou and successfully passed her viva in January 2018 in the UK. The research focused on the effective protection of the social and economic rights of bank depositors and investors by courts and arbitration in the light of the financial crisis in the EU. The EU law principle of effective judicial protection and the rights of depositors were particularly examined. She was research assistant on the JMM running at the Law School of UCLan Cyprus from 2014 and 2017 entitled ‘The Law of Financial and Economic Governance in the EU’ (‘FEcoGov’), considering the law and governance of finance and economic policy in the EU and in the global context of the financial and sovereign debt crisis in the EU and beyond. She wrote a JMMWP on the banking crisis in the UK and in Cyprus and a journal article on the banking crisis in Cyprus in the context of the Eurozone and has presented her research at many different fora both in Cyprus and in Europe. Despina was involved in consultancy work on legal issues relating to the financial crisis in Cyprus and dispute resolution mechanisms. She was also actively involved in the organisation and delivery of CPD courses for lawyers under the umbrella of the Law Academy of the School of Law of UCLan Cyprus (arbitration, mediation).

DIVERSITY OF ENFORCEMENT TITLES IN CROSS-BORDER DEBT COLLECTION IN THE EU: NATIONAL REPORT: CYPRUS

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Abstract The report provides a comprehensive breakdown of the structure and substance of judgements in the Cypriot Courts, deconstructing the operative and reasoning parts of judgements according to the Cyprus Civil Procedure Rules and relevant case law. In particular, the operative and reasoning part are approached in the light of the available legal remedies and procedures. Additionally, the question of how res judicata is handled by the Cypriot courts is tackled, focusing on case law pertaining to debt collection. Finally, the approach to lis pendens in Cypriot Law is presented, with references to both Cypriot and EU case law, as well as to the Brussels IA Regulation (Recast). This report was produced as part of a study conducted under the auspices of the EU project EN4s (“Diversity of Enforcement Titles in cross-border Debt Collection in EU”) under the coordination of the Faculty of Law University of Maribor.

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